

No. 20071

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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BAKER & TAYLOR DRILLING Co.,

*Appellant,*

*vs.*

R. W. STAFFORD, Trustee,

*Appellee.*

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Appeal From the District Court of the United States for  
the Southern District of California, Central Division.

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## APPELLANT'S OPENING BRIEF.

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**FILED**

OCT 4 1965

FRANK H. SCHMID, CLERK



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## APPELLANT'S OPENING BRIEF.

---

### I.

#### Statement of Pleadings and Facts as to Jurisdiction.

This is an appeal from final judgment of the United States District Court for the Southern District of California, Central Division, in a controversy arising in a Chapter X Bankruptcy proceeding for corporation reorganization.

On June 1, 1963, Tri-State Petroleum, Inc. filed in the United States District Court for the Northern District of Nevada a petition for corporation reorganization under Chapter X of the Bankruptcy Act (U.S.C. Title 11, Chap. X, Secs. 501 *et seq.*) [R. 2 *et seq.*]. On June 24, 1963, an order was entered in the United States District Court for the District of Nevada approving the petition, appointing R. W. Stafford Trustee, ordering reference to Special Master and restraining all persons from commencing or continuing any action or suit against the debtor or Trustee, in any court, for

the purpose of taking possession of or interfering with possession of or enforcing a lien upon any property owned by or in possession of the debtor or Trustee [R. 10 *et seq.*]. On August 10, 1963, the proceeding was transferred to the District Court of the United States for the Southern District of California, Central Division [R. 91 *et seq.*]. On September 4, 1963, Ronald Walker was appointed Referee and Special Master in the proceeding by the United States District Court, Southern District of California, Central Division [R. 298].

On February 19, 1964, R. W. Stafford, Trustee, filed in such proceeding an application for show cause order alleging that the debtor corporation had an interest in oil and gas well and leases located in Hansford County, Texas, among which was alleged to be a gas well located on the SE/4 of Section 2, Block 1, H&GN Ry. Co. Survey, Hansford County, Texas; that J. D. Amend, acting on behalf of himself and the debtor corporation, entered into an oil and gas lease with Phillips Petroleum Company for the drilling of a gas well on said SE/4 of Section 2, and, as evidence of the agreement, J. D. Amend addressed a letter to H. F. Schlittler who was then President of the debtor corporation, the substance of the letter, as set out in the application for show cause order, was that it would confirm an agreement as to a Cleveland gas well on Section 2; that after entering into the lease, a well was drilled capable of producing; that debtor corporation advanced sums of money to assist in defraying expenses of drilling the well; that certain obligations were incurred which have not been satisfied, and that among the creditors claiming a lien upon the well and property were Baker & Taylor Drilling Co. and J. D. Amend; that Baker & Taylor Drilling Co., with offices at Amarillo, Texas, was claiming a lien upon the property in the sum of \$27,536.78 by vir-

tue of certain work and drilling operations performed by the company upon the property; that during the drilling of the well and during the month of December, 1962, the debtor corporation paid to Baker & Taylor Drilling Co. the sum of \$60,000.00 represented by three checks made payable to Baker & Taylor Drilling Co. for the purpose of applying same upon the drilling operations upon the well, and that it appeared that credit had only been given for the payment of \$29,363.00; that for proper administration of the estate the validity and amount of the liens and claims should be determined and that the lien rights of such creditor be transferred to the funds to be received from production and/or sale of the property, so as to permit applicant to operate the properties. Applicant prayed that an order ordering and directing Baker & Taylor Drilling Co., J. D. Amend and other named parties to show cause why they should not be required to establish the amount of their claim and validity of any claimed lien before the court, why any valid lien found to be in existence should not be transferred to the funds received from the operation of the well, why the Trustee should not be permitted to operate the properties and why it should not be determined that each of the creditors is amenable and subject to the restraining order of the court and enjoined from filing or prosecuting any pending litigation against the property described [R. 107 *et seq.*].

On February 19, 1964, Ronald Walker, Referee and Special Master in Bankruptcy, made and entered an order that Baker & Taylor Drilling Co., J. D. Amend and other named parties appear before the court in Los Angeles, California, at a time and hour fixed, and show cause, if any, why they should not be required to establish the amount of their claim, if any, and the validity of any claimed lien upon the property belonging to debtor, including the oil and gas well described in the

application of Trustee; why the creditors should not be required to abide the restraining order of June 24, 1963; why any creditor who had knowingly violated that restraining order should not be certified for contempt; why any lien rights shown to exist should not be transferred to the funds received from the sale or operation of the well [R. 116, 117].

Baker & Taylor Drilling Co., pursuant to the show cause order, filed its plea to the jurisdiction asserting lack of jurisdiction as to subject matter and as to person [R. 141-144] and, subject thereto, its answer asserting that it had entered into a contract with J. D. Amend for the drilling of the well in question, that J. D. Amend became indebted to it for the drilling of the well and that Baker & Taylor Drilling Co. held a lien against the gas well and asserted that lien [R. 145-151]. J. D. Amend filed pleading on February 28, 1964, which he supplemented March 5, 1964 [R. 119, 139].

The Special Master proceeded with hearings on March 24 and 25, 1964 [Rep. Tr. of hearings on order to show cause filed herein as Vol. II of the Record]. The Special Master thereafter heard evidence on July 1 and 2, 1964 [Rep. Tr. of reset hearing on order to show cause filed as Vol. III of the Record].

The Special Master, as Special Master on October 26, 1964, filed in the United States District Court, Southern District of California, Central Division, Findings, Report, Recommendations and Order, subject to approval of the United States District Judge. The Findings, Report and Recommendations are reflected in Record 173. The Special Master's Order is reflected in Record 327-329. The Findings, Report, Recommendations and Order were objected and excepted to by Baker & Taylor Drilling Co. as proposed Findings, Conclusions and Order [R. 157 *et seq.*].

The Special Master's Order adjudged and decreed that Tri-State Petroleum, Inc. had an equitable and conditional  $\frac{3}{4}$  interest in the gas well and lease upon Section 2, subject to royalty and overriding royalties referred to in the Order, and ordered and directed that J. D. Amend transfer that interest to the Trustee of Tri-State, when the Trustee had satisfied  $\frac{3}{4}$  of the indebtedness as set forth in the Findings, that when the debts and obligations are satisfied, Tri-State shall have the right, subject to approval of the court, to take such steps, at its own cost, to place the gas well on production; and further ordered that in the event Tri-State is unable to pay and satisfy the debts that it was directed to advertise the property for sale and sell the property free and clear of all liens and claims; and further ordered that Baker & Taylor Drilling Co. or anyone acting for or in its behalf, is estopped and enjoined and restrained from thereafter filing, prosecuting or taking any action in any court of any jurisdiction other than before the lower court against *J. D. Amend* or Tri-State Petroleum, Inc., or the Trustee in Bankruptcy of Tri-State Petroleum, Inc., based upon its claim growing out of the drilling of the gas well mentioned. It further ordered that the injunction and restraining order previously issued in the bankruptcy proceedings remain in force and effect [R. 327-329].

On November 3, 1964, Baker & Taylor Drilling Co. filed its Objections and Exceptions to the Report, Recommendations, Findings, Conclusions of Law and Order of the Special Master [R. 203 *et seq.*]. On November 4, 1964, Baker & Taylor Drilling Co. filed its motion for hearing upon its objections and exceptions [R. 230].

On February 19, 1964, the United States District Court for the Southern District of California entered its judgment denying the motion of Baker & Taylor

Drilling Co. regarding its Objections and Exceptions to the Findings, Report, Recommendations and Order of the Special Master, adopting the Findings and Conclusions of Law of the Special Master and adopting the Order of the Special Master as the order of the court [R. 233].

The amount involved is in excess of \$500.00. The amount involved as to Baker & Taylor Drilling Co. is \$25,871.63 [TR. 6, 122, 124, 125—March 24 hearing].

The United States District Court, Southern District of California, Central Division, had jurisdiction, under Rule 53(e), Federal Rules of Civil Procedure; General Orders 52 and 47, General Orders in Bankruptcy (U.S.C.A.—following Sec. 53, Title 11), adopted by the Supreme Court of the United States in 1961, to act upon and with respect to the Special Master's Report. Being a final judgment rendered in a controversy arising in bankruptcy, as contemplated by Section 24 of the Bankruptcy Act, 11 U.S.C. Sec. 47, this Court has appellate jurisdiction to review under said Section 24 of the Bankruptcy Act, 11 U.S.C. Sec. 47, which is made specifically applicable to Chapter X Bankruptcy proceedings by Section 121 of the Bankruptcy Act, 11 U.S.C. Sec. 521, under Title 28, Section 1291, U.S.C. and General Order 36, General Orders in Bankruptcy (U.S.C.A.—following Sec. 53, Title 11), adopted by the Supreme Court of the United States in 1961.

Alternatively, if this be deemed an appeal from an interlocutory order, which appellant urges it is not but that it is a final judgment rendered in a controversy arising in a proceeding in bankruptcy as contemplated by Section 24 of the Bankruptcy Act, this Court has jurisdiction to review on such interlocutory order under 28 U.S.C. 1292.



II.

Statement of the Case.

A. Questions Presented.

While, because of the nature of the proceeding involved, the Specifications of Error are more numerous, the questions herein basically involved are:

(1) Were the Special Master and the court below without jurisdiction to determine as between J. D. Amend and Baker & Taylor Drilling Co. the liability of J. D. Amend to Baker & Taylor Drilling Co. for debt under the contract between those parties?

(2) Were the Special Master and the court below without jurisdiction to determine rights and liabilities as between J. D. Amend and Baker & Taylor Drilling Co. with respect to property and property rights owned by J. D. Amend to which the debtor had no title or right, either legal or equitable?

(3) Were the Special Master and the court below without jurisdiction to enjoin and restrain or interfere with the exercise of rights by Baker & Taylor Drilling Co. against J. D. Amend by enjoining and restraining suits or actions in other courts by Baker & Taylor Drilling Co. against J. D. Amend for debt, or to maintain other personal actions against him?

(4) Were the Special Master and the court below without jurisdiction to determine any rights as between J. D. Amend and Baker & Taylor Drilling Co.?

(5) Were the Special Master and the court below without jurisdiction of the subject matter involved as to the gas well on Section 2 and the lease pertaining thereto?

(6) Were the Special Master and the court below without jurisdiction of Baker & Taylor Drilling Co. as

to the matter involved in the application of the Trustee for show cause order?

(7) Did the Special Master and the court below have jurisdiction to determine title to the gas well on Section 2 and the lease pertaining thereto?

(8) Was Baker & Taylor estopped to or from applying the \$20,000.00 checks of Tri-State Petroleum, Inc. to the account of Tri-State Petroleum, Inc., as it did?

**B. Manner in Which Questions Are Raised.**

The manner in which the questions involved are raised is as follows:

(a) The plea of lack of jurisdiction by Baker & Taylor Drilling Co. [R. 114 *et seq.*].

(b) Baker & Taylor's Objections and Exceptions to the Special Master's proposed Report, Findings of Fact, Conclusions of Law and Order [R. 157 *et seq.*].

(c) The Special Master's Report, Findings of Fact and Conclusions of Law [R. 173 *et seq.*].

(d) The Special Master's Order of October 26, 1964 [R. 327-329].

(e) Baker & Taylor Drilling Co.'s Objection and Exceptions to the Findings, Report, Recommendations and Order of the Special Master [R. 203].

(f) Judgment of the United States District Court of date February 19, 1965, denying and overruling the objections and exceptions of Baker & Taylor Drilling Co. to the Findings, Report, Recommendations and Order of the Special Master and adopting the Findings, Report, Recommendations and Order of the Special Master [R. 233].

A detailed record reference to the specific manner and place at which the questions are raised is included in the Appendix hereof as Appendix Exhibit 1 and is here referred to.



### C. Statement of Facts.

This case arose in a proceeding for corporation reorganization of Tri-State Petroleum, Inc., a corporation, under Chapter X of the Bankruptcy Act [Petition, R. 2 *et seq.*]; application of Trustee for show cause order [R. 107 *et seq.*]; show cause order [R. 116]; order of the United States District Court [R. 233].

Baker & Taylor Drilling Co. is a Delaware corporation with no permit to do business in the State of California, it does not do business in California and has never done business in California [R. Vol. 11, Reporter's TR—March 24, 25, 1964 proceeding].

J. D. Amend is a resident of Amarillo, Texas, and states his principal occupation is agriculture [TR. 8—March 24 hearing].

Tri-State Petroleum, Inc.'s petition for corporate reorganization under Chapter X, Bankruptcy Act, was filed June 17, 1963, in the United States District Court for the District of Nevada [R. 2] and approved by that Court on June 24, 1963 [R. 10-11]. R. W. Stafford was, by that Court at that time and in that Order, appointed Trustee [R. 11]. That Court found the indebtedness of the debtor corporation to be in excess of \$250,000.00 [R. 11]. The June 24, 1963 order approving the petition contained the usual broad provisions restraining all persons from interfering by lawsuit and otherwise with the property of debtor and the Trustee [R. 17]. On August 15, 1963, the proceeding was transferred to the District Court of the United States for the Southern District of California, Central Division [R. 91].

Baker & Taylor Drilling Co. did not appear or file any pleading or instrument in the proceeding until after the show cause order. The involvement of Baker & Taylor in this cause is wholly involuntary as to it.

On or about February 19, 1964, Ronald Walker, Referee and Special Master, pursuant to an application filed by the Trustee, issued Order ordering that Baker & Taylor Drilling Co., J. D. Amend and other named persons appear before him on February 28, 1964, and show cause, if any, why they should not be required at such hearing to establish the amount of their claims and the validity of any claimed lien upon any property belonging to the debtor, including an oil and gas well located in Hansford County, Texas; and to show cause, if any, why any lien rights against such gas well should not be transferred to the funds received from the sale or operation of the well, and that pending the hearing it be held amenable to the restraining order of the court and restrained from commencing the prosecution of any litigation or from further prosecution of any litigation pending which sought a judgment or foreclosure of any claim against the property of the oil and gas well mentioned [R. 116].

Baker & Taylor Drilling Co. filed its plea asserting lack of jurisdiction of the property in Hansford County, lack of jurisdiction of the person of Baker & Taylor Drilling Co., lack of jurisdiction of the subject matter, lack of any title or property interest in the debtor in the Hansford County gas well property, and lack of jurisdiction to hear, determine and decree title into the debtor or the corporation or the Trustee in such property. Subject to its plea to the jurisdiction, Baker & Taylor answered as required by the show cause order [R. 141-151].

On February 28, 1964, J. D. Amend, *pro se*, filed pleading in which he alleged that: He was operator of the Wilbanks Well on Section 2, owned 25% of the working interest therein, did not recognize anyone as having an interest in the well until all bills have been paid, and H. F. Schlittler has described the manner in

which 75% is to be assigned, he has never dealt with Tri-State Petroleum, Inc., his 25% is in no way connected with the remaining 75%, he had expended \$56,024.69 in drilling and completing the well, in addition there were valid unpaid bills totaling \$26,654.84, there is a claim of Baker & Taylor Drilling Co. of \$27,536.78 that may or may not be valid and its validity and extent must be determined [R. 119]. On March 5, 1964, J. D. Amend, *pro se*, filed supplemental pleading alleging that all liens should be transferred to proceeds of sale, the only claim in question is that of Baker & Taylor Drilling Co., "*and whether it is declared valid completely or in part will be of no consequence to him.*" [R. 139].

J. D. Amend's pleading in no manner raises any issue of rights between him and Baker & Taylor Drilling Co. and in no manner seeks determination of issues between them.

Pursuant to the show cause order, the Special Master proceeded to hear testimony and receive evidence on March 24 and 25, 1964, at which hearing J. D. Amend, G. D. Bowie, Jr., Treasurer of Baker & Taylor Drilling Co., and H. F. Schlittler, last President of the debtor corporation, testified at the hearing [R. 1, 7, 60, 76, 99, Vol. II—TR. hearing on order to show cause]. On July 1 and 2, 1964, the Special Master heard additional testimony. At the July hearing G. D. Bowie, Jr. and J. D. Amend again testified; Roy L. Bulls, Secretary of Baker & Taylor Drilling Co., testified for the first time [R. Vol. III—Rep. Tr. of reset hearing on show cause order, July 1 and 2, 1964].

At the March hearing the Special Master announced that he would have to hear the matter before he could determine whether there is or is not jurisdiction [R. 8, Vol. II—TR. March 24-25 hearing]. The hearing

proceeded with Baker & Taylor reserving its jurisdictional plea with the Special Master's permission [R. Vol. II and III].

Two contracts with Baker & Taylor Drilling Co., each for the drilling of a well for oil or gas, are involved in the controversy as to Baker & Taylor Drilling Co. The contract fixing the relationship between Baker & Taylor and Tri-State Petroleum, Inc. is a distinctly different contract from the contract fixing the relationship between Baker & Taylor and J. D. Amend.

The contract fixing the relationship between Baker & Taylor Drilling Co. and Tri-State Petroleum, Inc. was a contract between Baker & Taylor Drilling Co. and *Tri-State Petroleum, Inc.* of date August 24, 1964, for the drilling by Baker & Taylor Drilling Co. of a well for oil or gas on Section 54, Block 4-T, T&NO Survey, Hansford County, Texas. It provided for payment to Baker & Taylor by Tri-State of a lump sum of \$60,000.00 for the drilling of the well to the specified depth, together with any sums which might accrue for additional or extra work referred to as day rate compensation. The contract provided for \$30,000.00 of the sum to be placed in escrow to be due at completion of the drilling of the well, "and the remaining sum to be due 30 days after completion of the drilling of the well." [R. 41—Deft. Ex. 30(a), Amend. Depo.; Baker & Taylor Ex. D]. The well drilled under this contract is sometimes referred to as the Nusbaum Well [TR. 40—March 24 hearing]. The \$30,000.00 provided to be placed in escrow was delivered to Baker & Taylor in the form of check of Tri-State Petroleum, Inc. and receipted for September 21, 1962 [R. 46, Vol. II]. The check was deposited on that date and again on October 10, 1962 [Exs. 7(a), (b), (c), (d), (e), (f), Amend. Depo.]. Another check of Tri-State Petroleum, Inc. for

\$5,000.00 was received by Baker & Taylor on October 26, 1962, and deposited [Exs. 11(b), (c), Amend. Depo.; Trustee's Ex. 3, Vol. II]. Another check of Tri-State Petroleum, Inc. for \$5,000.00 was received by Baker & Taylor and deposited November 2, 1962 [Ex. 10, Amend. Depo.; Trustee's Ex. 4; R. 12, Vol. II]. The total net amount which became owing to Baker & Taylor Drilling Co. under the contract with Tri-State for the drilling of the Nusbaum Well was \$70,036.63 [R. 105—March 24, 1964 hearing]. After application of the \$40,000.00, represented by the above mentioned three checks, there remained yet owing under the Tri-State contract the sum of \$30,036.63. There is no contention by anyone that this amount was not the correct amount owing at the time the incidents herein involved began to occur.

The contract fixing relationship between Baker & Taylor Drilling Co. and J. D. Amend was a contract between Baker & Taylor and *J. D. Amend* dated December 1, 1962, which provided for the drilling by Baker & Taylor Drilling Co. of a well for oil or gas on Section 2, Block 1, H&GN Survey, Hansford County, Texas. The contract provided for payment to Baker & Taylor Drilling Co. by J. D. Amend of a lump sum of \$58,000.00 for the drilling of the well to the specified depth, together with any sums which might accrue for additional or extra work referred to as day rate compensation. The contract provided that the "sum shall be payable to First Party by Second Party at Amarillo, Potter County, Texas, within thirty days after completion of the drilling of the well." [R.—Deft. Ex. 1, Amend Depo.]. The well drilled under this contract is sometimes referred to as the Wilbanks Well [TR. 48—March 24 hearing].

The wells provided for in the two contracts were drilled and there is no contention by anyone that either



well was not drilled as provided for in the contracts. The "Nusbaum" Well, drilled under the Tri-State Petroleum, Inc. contract, was completed October 3, 1962 [TR.—March 24 hearing]. The "Wilbanks" Well, drilled under the J. D. Amend contract, was commenced December 2, 1962, and completed December 22, 1962 [TR. 14—March 24 hearing].

Aside from and subject to the jurisdictional questions involved herein, the question involved herein is whether Baker & Taylor Drilling Co. was estopped to make application of a \$20,000.00 *check of Tri-State Petroleum, Inc.* and \$10,036.63 of another *check of Tri-State Petroleum, Inc.* to the *account of Tri-State Petroleum, Inc.* on account of the Nusbaum Well, as it did, rather than to the account of J. D. Amend on account of the Wilbanks Well.

Three \$20,000.00 checks of Tri-State Petroleum, Inc., identified as Checks Nos. 127, 142 and 156, were received by Baker & Taylor Drilling Co. during December, 1962. Check No. 142 is Exhibit 13c to the Amend Deposition. Such deposition was offered and received as a whole [TR. 3—March 24 hearing]. That check was also offered and received as Trustee's Exhibit 5, page 18, Transcript March 24 hearing, and as Baker & Taylor Exhibit F offered and received [TR. 119—March 24 hearing]. Check No. 127 is Trustee's Exhibit 7 offered and received [TR. 19—March 24 hearing]. Check No. 156 is Trustee's Exhibit 8 offered and received [TR. 19—March 24 hearing]. Supplied herewith in Appendix is Appendix Exhibit 2, copy of Check No. 127; Appendix Exhibit 3, copy of Check No. 142; and Appendix Exhibit 4, copy of Check No. 156. All checks were received and currently applied more than six months before the Chapter X petition was filed.

Supplied herewith in Appendix is Appendix Exhibit 5, copy of Exhibit K, and Appendix Exhibit 6, copy of Exhibit L, which show the date each of the three checks was received by Baker & Taylor, when deposited and how applied.

Exhibit K was offered and received [TR. 7—July 1 hearing]. Exhibit L was offered and received [TR. 7—July 1 hearing]. The witness G. D. Bowie, Jr. testified that these exhibits summarized the transactions [TR. 9—July 1 hearing]. He testified at length as to the details which made up the exhibits [TR. 9—July 1 hearing]. No question has heretofore been raised but that Exhibits K and L reflect the facts, and we assume none will be raised here.

Check No. 127 [Trustee's Ex. 7; R. 111, 112; TR. —March 24 hearing] of Tri-State Petroleum, Inc., payable to Baker & Taylor Drilling Co. in the amount of \$20,000.00 dated *December 17, 1962*, was received by Baker & Taylor Drilling Co. from Tri-State Petroleum, Inc. *December 13, 1962* [TR. 111—March 24 hearing], and deposited by Baker & Taylor on that date [Baker & Taylor Ex. E; TR. 113—March 24 hearing]. It was by the drawee bank on December 18, 1962 [TR. 112—March 24 hearing]. It had no designation of the application to be made of it, and Baker & Taylor received no direction from anyone as to how it should be applied [TR. 112-113—March 24 hearing]. Tri-State Petroleum, Inc. did not owe Baker & Taylor Drilling Co. any debt at the time of receipt of Check No. 127 except for the drilling of the Nusbaum Well [TR. 114—March 24 hearing]. Baker & Taylor Drilling Co. applied that check to Tri-State's indebtedness on account of Tri-State's contract with Baker & Taylor Drilling Co. dated August 24, 1962, in connection with the drilling of the Nusbaum Well on Section 54. The application of that check was currently made.

Check No. 142 [Baker & Taylor Ex. F; Trustee's Ex. 5] was received by Baker & Taylor Drilling Co. from *J. D. Amend* December 19, 1962, and receipted for by it by the receipt shown as Deposition Exhibit 12, Amend Deposition, which is in evidence. That check was dated December 15, 1962, was payable to Baker & Taylor Drilling Co. in the amount of \$20,000.00, and had written on it "*on account of Section 2.*" That check was applied December 20, 1962, by Baker & Taylor Drilling Co. on the amount owing it by *J. D. Amend* on account of the contract with him in connection with Section 2. It was so applied pursuant to the designation on the check. It was deposited December 20, 1962 [R.—Ex. 13(a) Amend Depo.].

Check No. 156 [Trustee's Ex. 8] dated December 20, 1962, payable to Baker & Taylor Drilling Co. in the amount of \$20,000.00, was received by Baker & Taylor Drilling Co. from Tri-State Petroleum, Inc. [TR. 115—March 24 hearing]. It had no designation as to how it should be applied [TR. 115—March 24 hearing], and Baker & Taylor Drilling Co. received no direction from anyone as to how it should be applied [TR. 116—March 24 hearing]. It was deposited December 17, 1962, by Baker & Taylor Drilling Co. Baker & Taylor Drilling Co. then currently applied \$10,036.63 of such check to the payment of the balance of that sum owing it by Tri-State under its contract with Tri-State of August 24, 1962, on account of the drilling of the Nnsbaum Well on Section 54 [TR. 115, 119, 120—March 24 hearing]. Baker & Taylor Drilling Co. applied the remaining \$9,963.37 to the payment of that amount yet owing it for the drilling of the Wilbanks Well on Section 2 [TR. 115, 119, 120—March 24 hearing], leaving as the balance owing it for the drilling of that well the sum of \$25,871.63 [TR. 6, 122, 124, 125—March 24 hearing].



The Trustee contends, in this controversy, that the three \$20,000.00 checks of Tri-State Petroleum, Inc. should have been applied to the indebtedness of J. D. Amend under his contract with Baker & Taylor and that the one check and part of the other, which was applied to the indebtedness of Tri-State Petroleum, Inc. under its contract, should not have been so applied. The Nusbaum Well was a dry hole [TR. 89—March 24 hearing], which no doubt accounts for the Trustee's desire to have the funds applied to the account of the Wilbanks Well.

Any interest of Tri-State Petroleum, Inc. in or to the well located on Section 2 or the leasehold estate under which it was drilled must arise, if at all, from a letter of J. D. Amend dated February 11, 1963, addressed to H. F. Schlittler. This letter appears as Exhibit 3 to the Amend Deposition and was introduced and received [TR. 3—March 24 hearing]. Copy of the letter is supplied herewith as Appendix Exhibit 7.

J. D. Amend testified that the above-mentioned letter was the only writing that he had made to anyone with respect to the assignment of any interest in the lease [TR. 54—March 24-25 hearing]. He testified that he had made some oral commitments to Mr. Schlittler [TR. 54—March 24-25 hearing].

Mr. Schlittler, who was President of Tri-State Petroleum, Inc., testified that he had an understanding with J. D. Amend that Tri-State was to pay \$60,000.00 of the drilling costs or \$60,000.00 on the development of the well, referring to the Wilbanks Well; [TR. 80—March 24-25 hearing] that before the commencement of the drilling of the well on Section 2 he had a conversation with Amend and that conversation was substantially confirmed by the above-mentioned letter [TR. 156, 166—March 24-25 hearing]:

and that Tri-State's obligation to pay was to J. D. Amend and had nothing to do with the obligation of Amend and Baker & Taylor [TR. 167—March 24-25 hearing].

J. D. Amend, himself, did not hold title to the lease under which the well in question was drilled but only had an agreement with Phillips Petroleum Company to the effect that if a well were drilled within a certain time and in a certain manner, a leasehold interest would be assigned to him by Phillips, but only provided that Amend should furnish Phillips with evidence satisfactory to it that all bills for labor and material in connection with his operations had been fully paid, Phillips agreed that only then and thereupon it would, subject to other provisions, conditions and reservations, assign and transfer to Amend a leasehold interest in the lease. The lease has not been assigned to Amend by Phillips [Amend Depo. Ex. 2; see also Amend Depo. testimony pp. 9, 10, 11].

It is recognized by the Trustee and by J. D. Amend that there is yet unpaid, in connection with the drilling of the well, a lien indebtedness to Halliburton Company in the amount of \$18,816.11, a lien indebtedness to Welex, a division of Halliburton Company, in the sum of \$2538.36, and a lien indebtedness to Beacon Supply Company in the amount of \$3709.88. In addition to these, is the claim of Baker & Taylor Drilling Co., which the Trustee sought to put at issue therein. It is also recognized that these items of expense are items of which Schlittler must pay  $\frac{3}{4}$  in order to comply with the conditions of the letter [TR. 2-4—March 24 hearing]. The record reflects that there were more than \$25,000.00 other expenses incurred upon which Schlittler was obligated to pay  $\frac{3}{4}$  in order to comply with the conditions of the letter, but which he had not done [TR. 2—March 24 hearing].

Thus, it is completely obvious from the foregoing and from the Record herein that Tri-State Petroleum, Inc. does not have a title to any interest whatsoever in the well drilled on Section 2 and the leasehold estate under which it was drilled, but at most asserts and seeks to establish an equitable claim thereto which it sought to have the Bankruptcy Court ripen into a title or interest in the property.

While the letter from Amend to Schlittler of February 11, 1963, speaks in terms of 75% interest in the lease to be, under certain conditions, transferred to Schlittler, the Trustee only purports to claim 20½% interest in the working interest under the leasehold estate. By the report of the Trustee filed August 9, 1963, 20½% interest is set out as an interest claimed by Tri-State, Schedule 1-J to that report lists 41 other people, including J. D. Amend, who owned 66% interest [R. 25, 31, 32, 51]. We are not dealing with a property of Tri-State Petroleum, Inc. or even of Schlittler. The property was not and is not a property owned by Tri-State Petroleum, Inc., but if it has or had an equitable right to have adjudicated to it any title, which is denied, any such equitable right would extend only to 20½% interest. The Record reflects, without possibility of challenge by anyone, that at least 25% interest in the working interest under the lease is and was owned by J. D. Amend.

The Special Master and ultimately the District Court have gone far beyond the scope of the Trustee's application for show cause order and far beyond the scope of the show cause order. The Special Master sought (a) to find and adjudicate in the debtor or Trustee an interest in the property involved, though without finding or adjudicating what, or the quantum of that, interest; (b) to adjudicate questions of liability of J. D. Amend to Baker & Taylor Drilling Co. under the

contract between Baker & Taylor Drilling Co. and J. D. Amend; (c) to determine application of payments as between J. D. Amend and Baker & Taylor Drilling Co. as to a debt of J. D. Amend to Baker & Taylor Drilling Co.; (d) to adjudicate extinguishment of a debt of J. D. Amend to Baker & Taylor Drilling Co. with respect to which the debtor had no liability, primary, secondary or otherwise; (e) to adjudicate the invalidity of a lien claimed by Baker & Taylor Drilling Co. as to at least a 25% interest in the well on Section 2 and the leasehold estate under which it was drilled, which 25% interest admittedly was owned by J. D. Amend and to which the debtor had no right, claim, interest or relationship; (f) to adjudicate that Baker & Taylor Drilling Co. is estopped from asserting a claim against J. D. Amend, or from asserting a lien against the gas well or leasehold interest in Section 2, even as to the 25% interest therein admittedly owned by J. D. Amend and with respect to which the debtor has no right, title, claim or relationship; (g) to adjudicate title into the debtor or the Trustee of an interest in the property in question notwithstanding the fact that it is shown and established and the Special Master found that there yet exists \$54,000.00 of costs of completing the well in question, of which sum the debtor was, by the only instrument or evidence under which it could acquire an interest, obligated to pay the sum of \$41,038.88 before any claim or interest could be effected into it; (h) to enjoin Baker & Taylor Drilling Co. from prosecuting or taking any action in any court of any jurisdiction, other than before this Court, against J. D. Amend upon any claim growing out of the drilling of the gas well on Section 2; and (i) to enjoin Baker & Taylor Drilling Co. from prosecuting or taking any action to enforce a contract debt existing between Baker & Taylor Drilling Co. and J. D. Amend, executed

by them, to which contract the debtor was not a party and under which it had no liability to Baker & Taylor Drilling Co., primary, secondary or otherwise [Order of Special Master R. 327-329].

### III.

#### Specifications of Errors.

1. The Referee and Special Master was without jurisdiction of Baker & Taylor Drilling Co. as necessary to enable him to enjoin, restrain or interfere with suits or actions in other courts by Baker & Taylor Drilling Co. against J. D. Amend as it did, and the District Court erred in holding that the Referee and Special Master had such jurisdiction [Baker & Taylor's Objections and Exceptions Nos. I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a),(b),(c),(d) XXXI(a) and XXXII to the Special Master's Report—denied].

2. The District Court was without jurisdiction of Baker & Taylor Drilling Co. as necessary to enable it to enjoin, restrain or interfere with suits or actions in other courts against J. D. Amend as it did, and it erred in doing so.

3. The Referee and Special Master was without jurisdiction of Baker & Taylor Drilling Co. to determine as between J. D. Amend and Baker & Taylor Drilling Co. the liability of J. D. Amend to Baker & Taylor Drilling Co. under the contract between those parties, and the District Court erred in holding that the Referee and Special Master had such jurisdiction [Baker & Taylor's Objections and Exceptions Nos. I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

4. The District Court was without jurisdiction of Baker & Taylor Drilling Co. to determine as between J. D. Amend and Baker & Taylor Drilling Co. the liability of J. D. Amend to Baker & Taylor Drilling Co. under the contract between those parties, and it erred in holding that it had such jurisdiction.

5. The Referee and Special Master was without jurisdiction of Baker & Taylor Drilling Co. to enjoin or restrain or interfere with suits or actions by it to enforce its rights against J. D. Amend not related to nor affecting the bankruptcy reorganization proceedings, and the District Court erred in holding that the Referee and Special Master had such jurisdiction [Baker & Taylor's Objections and Exceptions Nos. I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

6. The District Court was without jurisdiction of Baker & Taylor Drilling Co. to enjoin or restrain or interfere with suits or actions by it to enforce its rights against J. D. Amend not related to nor affecting the bankruptcy reorganization proceedings, and the District Court erred in doing so.

7. The Referee and Special Master was without jurisdiction of Baker & Taylor Drilling Co. to determine as between J. D. Amend and Baker & Taylor Drilling Co. any rights and liabilities, and the District Court erred in holding that the Referee and Special Master had such jurisdiction [Baker & Taylor Drilling Co.'s Objections and Exceptions I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].



8. The District Court was without jurisdiction of Baker & Taylor Drilling Co. to determine as between J. D. Amend and Baker & Taylor Drilling Co. any rights and liabilities, and it erred in doing so.

9. The Referee and Special Master were without jurisdiction of Baker & Taylor Drilling Co. of the subject matter involved in the application of the Trustee for show cause, order, and the District Court erred in holding that the Referee and Special Master had such jurisdiction [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, II, XXI, XXIII, XXVII (1), (2), (4), (5)(a), (6), (7), (9) and (10), XVIII (a), (b), XXIX, XXX, XXXI to the Special Master's Report—denied].

10. The District Court was without jurisdiction of Baker & Taylor Drilling Co. of the subject matter involved in the application of the Trustee for show cause order, and it erred in not holding that it had no such jurisdiction.

11. The Referee and Special Master was without jurisdiction of Baker & Taylor Drilling Co. to enjoin or prohibit Baker & Taylor Drilling Co. from bringing or maintaining in other courts purely personal actions against J. D. Amend, and the District Court erred in holding that he had such jurisdiction [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII (1), (2), (3), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

12. The District Court was without jurisdiction of Baker & Taylor Drilling Co. to enjoin or prohibit it from bringing or maintaining in other courts purely personal actions against J. D. Amend, and it erred in holding that it had such jurisdiction.

13. The Referee and Special Master was without jurisdiction of subject matter necessary to permit him to order that Baker & Taylor Drilling Co. is estopped and enjoined and restrained from filing, prosecuting or taking any action in any court of any jurisdiction other than the bankruptcy court in which the proceeding was pending below against J. D. Amend based upon its claim growing out of the drilling of the gas well mentioned and described in such proceedings [Baker & Taylor Drilling Co.'s Objections and Exceptions I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII-(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII-(a), (b), (c), (d), XXXI(a), and XXXII to the Special Master's Report. Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, II, XI, XXIII, XXVII(1), (2), (4), (5)(a), (6), (7), (9), (10), XVIII(a), (b), XXIX, XXX, XXXI to the Special Master's Report—denied].

14. The District Court was without jurisdiction of subject matter necessary to permit it to order that Baker & Taylor Drilling Co. is estopped and enjoined and restrained from filing, prosecuting or taking any action in any court of any jurisdiction other than the bankruptcy court in which the proceeding was pending below against J. D. Amend based upon its claim growing out of the drilling of the gas well mentioned and described in such proceedings.

15. The Referee and Special Master was without jurisdiction in a summary proceeding to determine title to the real estate involved and to decree title to same into the Trustee, and the District Court erred in holding that he had such jurisdiction [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, III, VIII, XX, XX(b), XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10)].



XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

16. There was no pleading or cause to bring Baker & Taylor Drilling Co. before the Referee and Special Master or the District Court or within its jurisdiction as to any rights existent between it and J. D. Amend such as to permit the Referee and Special Master to enjoin it from filing, prosecuting or taking action against J. D. Amend in any court, other than the court below, and the District Court erred in holding that the Referee and Special Master had such jurisdiction.

17. There was no pleading or cause to bring Baker & Taylor Drilling Co. before the Referee and Special Master or the District Court or within its jurisdiction as to any rights existent between it and J. D. Amend such as to permit the Referee and Special Master to enjoin it from filing, prosecuting or taking action against J. D. Amend in any court, other than the court below, and the District Court erred in holding that it had such jurisdiction.

18. The Referee and Special Master was without jurisdiction in the summary proceeding upon the application of the Trustee to require appearance of Baker & Taylor Drilling Co. in the proceeding below and to adjudicate title to real estate, and the District Court erred in not so holding [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, III, VIII, XX, XX(b), XXI, XXII(a), XXIII, XXIV, XXV, XXVII(a), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a), and XXXII to the Special Master's Report—denied].

19. The Referee and Special Master was without jurisdiction to bring Baker & Taylor Drilling Co. before the court below in summary proceedings and adjudicate rights of Baker & Taylor Drilling Co., and the Dis-

trict erred in not so holding [Baker & Taylor Drilling Co.'s Objections and Exceptions I, III, VIII, XX, XX(b), XXI, XXIII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a), and XXXII to the Special Master's Report—denied].

20. The Referee and Special Master was without jurisdiction to bring Baker & Taylor Drilling Co. before the Court below in a summary proceeding and adjudicate the question of its lien as to property not even owned, and the District Court erred in not so holding [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, III, VIII, XX, XX(b), XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a), and XXXII to the Special Master's Report—denied].

21. The Referee and Special Master was without jurisdiction to bring Baker & Taylor Drilling Co. before the court below in a summary proceeding and adjudicate the question of Tri-State Petroleum, Inc.'s debt to it, and the District Court erred in not so holding.

22. The Referee and Special Master purported to act beyond his jurisdiction with respect to subject matter of which he had no jurisdiction, and the District Court erred in not so holding.

23. The Referee and Special Master purported to act beyond his jurisdiction and with respect to persons as to whom he had no jurisdiction, and the District Court erred in not so holding.

24. The Referee and Special Master purported to act beyond his jurisdiction in ordering that Baker & Taylor Drilling Co. is estopped, and enjoining it, from taking any action in any court, other than the court below, against J. D. Amend or the Trustee based upon its

claim growing out of the drilling of the gas well involved, and the District Court erred in not so holding.

25. The District Court erred in overruling Baker & Taylor Drilling Co.'s objection and exception, which is its Objection and Exception No. II, to the Referee and Special Master's Finding of Fact No. II, asserting that such Finding of Fact is not supported by any evidence, is contrary to the evidence and is clearly wrong.

26. The District Court erred in adopting the Referee and Special Master's Finding of Fact No. II because same is not supported by any evidence, is contrary to the evidence and is clearly wrong.

27. The District Court erred in overruling Baker & Taylor Drilling Co.'s objection and exception, which is its Objection and Exception No. VII, to the Referee and Special Master's Finding of Fact No. VI, asserting that such Finding of Fact is not supported by any evidence, is contrary to the evidence and is clearly wrong.

28. The District Court erred in adopting the Referee and Special Master's Finding of Fact VI because such Finding of Fact is not supported by any evidence, is contrary to the evidence and is clearly wrong.

29. The District Court erred in overruling Baker & Taylor Drilling Co.'s objection and exception, which is its Objection and Exception No. VIII, to the Referee and Special Master's Finding of Fact No. VIII asserting that such Finding of Fact is not supported by any evidence, is contrary to the evidence and is clearly wrong.

30. The District Court erred in adopting the Referee and Special Master's Finding of Fact No. VIII because such Finding of Fact is not supported by any evidence, is contrary to the evidence and is clearly wrong.

31. The District Court erred in overruling Baker & Taylor Drilling Co.,’s Objection and Exception, which is its Objection and Exception No. IX, to the Referee and Special Master’s Finding of Fact No. VIII, asserting that such Finding of Fact is not supported by the evidence, is contrary to the evidence and is clearly wrong.

32. The District Court erred in overruling Baker & Taylor Drilling Co.’s objection and exception, which is its Objection and Exception No. XXII, to the Referee and Special Master’s Finding of Fact No. XIII, asserting that such Finding of Fact is not supported by the evidence, is contrary to the evidence and is clearly wrong.

33. The District Court erred in overruling Baker & Taylor Drilling Co.’s Objection and Exception, which is its Objection and Exception No. XX, to the Referee and Special Master’s Finding of Fact XXV, asserting that such Finding of Fact is not supported by the evidence, is contrary to the evidence and is clearly wrong.

34. The District Court erred in adopting and approving the Referee and Special Master’s Finding of Fact as follows:

“Baker & Taylor Drilling Co. was informed and knew, on or about December 15, 1962, that these checks were mailed by Tri-State Petroleum, Inc. for the purposes in this paragraph set forth.”

because same is not supported by evidence, but is contrary to the evidence and is clearly wrong.

35. The District Court erred in adopting and approving the Referee and Special Master’s Finding of Fact as follows:

“Notwithstanding this knowledge and request to so apply from J. D. Amend”

because same is not supported by any evidence, but is contrary to the evidence and is clearly wrong.

36. The District Court erred in adopting and approving the Referee and Special Master's Finding of Fact as follows:

"Baker & Taylor Drilling Co. thereafter misinformed J. D. Amend as to the application of these funds and the manner set forth in Finding Paragraph VI and withheld the true facts from J. D. Amend and Tri-State Petroleum, Inc. to their disadvantage and detriment until after May 1, 1963"

because same is not supported by any evidence, but is contrary to the evidence and is clearly wrong.

37. The District Court erred in adopting and approving the Referee and Special Master's Finding of Fact as follows:

"By reason of the above Baker & Taylor Drilling Co. is estopped from asserting a claim against J. D. Amend and/or Tri-State Petroleum, Inc., or from asserting a lien against the gas well or leasehold interest in Section 2 above described in any sum whatsoever"

because same is not supported by evidence, but is contrary to the evidence and is contrary to the law and facts; and for the further reason that the District Court or the Special Master had no jurisdiction to determine or adjudicate rights between Baker & Taylor Drilling Co. and J. D. Amend, nor with respect to rights or personal actions between them. As a matter of law under the established facts Baker & Taylor Drilling Co. was not estopped from asserting a claim against J. D. Amend or Tri-State Petroleum, Inc. or from asserting a lien against such property.

38. The District Court erred in adopting and approving the Referee and Special Master's Finding of Fact as follows:

"Baker & Taylor Drilling Co. had been overpaid for the drilling of this gas well in the sum of \$2800.00"

in that as a matter of law, on the basis of the evidence, Baker & Taylor has not been paid, but under the evidence there is yet owing and unpaid to Baker & Taylor Drilling Co. the sum of \$25,871.63.

39. The District Court erred in sustaining Finding of Fact No. XXV because same is not supported by the evidence, is contrary to the evidence and because as a matter of law, under the evidence, the property in question was not being held by J. D. Amend for the benefit of himself and the debtor herein, but on the contrary was being claimed for himself.

40. The District Court erred in sustaining Finding of Fact No. XXV because J. D. Amend has no right or power to submit the property involved to the summary jurisdiction of the court as against Baker & Taylor Drilling Co. to the prejudice of Baker & Taylor Drilling Co., nor the lien right or any other right of Baker & Taylor Drilling Co. in the property to the summary jurisdiction of the bankruptcy court.

41. The District Court erred in sustaining Finding of Fact No. XXV because J. D. Amend has no right, power or authority to submit to the summary jurisdiction of the bankruptcy court his interest in the property involved to the prejudice of the lien of Baker & Taylor Drilling Co. as to the interest of J. D. Amend in and to the property involved.

42. The District Court erred in sustaining Finding of Fact No. XXV because any admission or concession of J. D. Amend with respect to the equitable or



conditional interest of Tri-State Petroleum, Inc. could not prejudice the rights of Baker & Taylor Drilling Co. with respect to the property involved, particularly with respect to the interest and ownership of J. D. Amend or as to the rights of Baker & Taylor Drilling Co. as against J. D. Amend.

43. The District Court erred in overruling Baker & Taylor Drilling Co.'s objection and exception, which is its Objection and Exception No. XXI, to the Referee and Special Master's Finding of Fact XXVI, asserting that such Finding of Fact is not supported by the evidence, is contrary to the evidence and is clearly wrong.

44. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception, which is its Objection and Exception No. XXII, to the Referee and Special Master's Finding of Fact XXVII, asserting that such Finding of Fact is not supported by the evidence, is contrary to the evidence and is clearly wrong.

45. The District Court erred in overruling and not sustaining Baker & Taylor Drilling Co.'s Objection and Exception No. XXIII to the Findings of Fact of the Referee and Special Master.

46. The District Court erred in adopting and approving the Referee and Special Master's Finding of Facts as against Baker & Taylor Drilling Co.'s Objection and Exception No. XXIII.

47. The District Court erred in overruling and not sustaining Baker & Taylor Drilling Co.'s Objection and Exception No. XXIV to the Findings of Fact of the Referee and Special Master.

48. The District Court erred in adopting and approving the Referee and Special Master's Finding of Facts as against Baker & Taylor Drilling Co.'s Objection and Exception No. XXIV.

49. The District Court erred in overruling and not sustaining Baker & Taylor Drilling Co.'s Objection and Exception No. XXV to the Findings of Fact of the Referee and Special Master.

50. The District Court erred in adopting and approving the Referee and Special Master's Finding of Facts as against Baker & Taylor Drilling Co.'s Objection and Exception No. XXV.

51. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(1) to the Conclusion of Law I of the Referee and Special Master, which Objection asserts lack of jurisdiction of the Referee and Special Master of Baker & Taylor Drilling Co. and of property involved.

52. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(2) to the Conclusion of Law I of the Referee and Special Master, which Objection asserts lack of jurisdiction to determine rights as between J. D. Amend and Baker & Taylor Drilling Co. and to determine and adjudicate personal actions as between them.

53. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(3) to the Conclusion of Law I of the Referee and Special Master, which Objection asserts lack of power or authority of J. D. Amend to offset or confer jurisdiction to determine rights as between J.D. Amend and Baker & Taylor Drilling Co.

54. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(4) to the Conclusion of Law II of the Referee and Special Master, which Objection asserts lack of jurisdiction to determine lien rights which Baker & Taylor Drilling Co. had with respect to the interest of J. D. Amend in and to the well located on Section



2 and the lease incident thereto, and to determine and adjudicate personal actions.

55. The Conclusions of Law of the Referee and Special Master are erroneous because, under the facts established, Baker & Taylor Drilling Co. was not estopped from applying funds received by it from Tri-State Petroleum, Inc. as it did, and the District Court erred in not so holding.

56. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(5)(a) to Conclusion of Law III of the Referee and Special Master, which Objection asserts that such Conclusion of Law exceeds the jurisdictional power, right and authority of the Special Master or the District Court and purports to adjudicate rights and claims as between J. D. Amend and Baker & Taylor Drilling Co., and the Referee and Special Master and the District Court have no jurisdiction to do so.

57. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXVII(5)(b) to Conclusion of Law III of the Referee and Special Master, because such Conclusion of Law is not supported by facts but is contrary to the facts and is an erroneous conclusion of law based upon an erroneous conclusion of fact.

58. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXVII(5)(c) to Conclusion of Law III of the Referee and Special Master, because such Conclusion contains an incorrect statement of fact and is predicated upon an incorrect statement or finding of fact.

59. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXVII(5)(d) to Conclusion of Law III of the Referee and Special Master, because as a matter of law, under the

facts established, Baker & Taylor Drilling Co. is not estopped from applying the funds received by it from Tri-State Petroleum, Inc. as it did upon the balance owing to it by Tri-State Petroleum, Inc.

60. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXV-II(6) to Conclusion of Law X of the Referee and Special Master for the reason that the Referee and Special Master and the court below are without jurisdiction to restrain Baker & Taylor Drilling Co. from pursuing any and all rights or actions which it had against J. D. Amend and as against the interest of J. D. Amend in the Wilbanks Well on Section 2 and the lease incident thereto.

61. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXVII(7) to Conclusion of Law X of the Referee and Special Master because such Conclusion, when taken together with other Findings of Fact and other Conclusions of Law, would restrain, enjoin and prohibit Baker & Taylor Drilling Co. from proceeding against J. D. Amend to enforce an obligation of J. D. Amend to Baker & Taylor Drilling Co. to pay money which he had contracted to pay, and to enjoin, restrain and prohibit purely personal actions by Baker & Taylor Drilling Co. against J. D. Amend which the Special Master and the District Court were without jurisdiction to enjoin, restrain or prohibit.

62. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception XXVII(7) to Conclusion of Law X of the Referee and Special Master because such Conclusion, when taken together with other Findings of Fact and other Conclusions of Law, would enjoin, restrain and prohibit Baker & Taylor Drilling Co. from proceeding against

property owned by J. D. Amend, and never owned by the bankrupt and Trustee, to enforce a lien against the property owned by J. D. Amend, which the Court and Referee and Special Master, and each of them, were without jurisdiction to enjoin, restrain or prohibit.

63. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(10) to Conclusion of Law XIII of the Referee and Special Master because the District Court and the Referee and Special Master are without jurisdiction, right, power or authority as to rights and claims as between Baker & Taylor Drilling Co. and J. D. Amend and are without jurisdictional right, power or authority to adjudicate rights and particularly personal rights and personal causes of action existing between Baker & Taylor Drilling Co. and J. D. Amend and without jurisdiction, right, power or authority to adjudicate that Baker & Taylor Drilling is estopped and enjoined from filing, prosecuting or taking any action in any court of any jurisdiction other than the Court below against J. D. Amend based upon its claim growing out of the drilling of the gas well involved herein. The District Court and the Referee and Special Master were without jurisdiction, either of the subject matter or the parties, to enjoin the prosecution by Baker & Taylor Drilling Co. against J. D. Amend or to enjoin actions by Baker & Taylor Drilling Co. of the nature sought to be enjoined.

64. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(10) to Conclusion of Law XIII of the Referee and Special Master because such Conclusion is not supported by facts but is contrary to the facts and because such conclusion is an erroneous conclusion of law based upon an erroneous conclusion of fact.

65. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No.

XXVII(10) to Conclusion of Law XIII of the Referee and Special Master because such Conclusion of Law contains an incorrect statement of fact and is predicated upon an incorrect statement or finding of fact.

66. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(10) to Conclusion of Law XIII of the Referee and Special Master because as a matter of law under the facts established Baker & Taylor Drilling Co. was not estopped from applying the funds received by it from Tri-State Petroleum Inc. as it did upon the balance owing to it by Tri-State Petroleum, Inc.

67. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(11) to Conclusion of Law XIV of the Referee and Special Master because such finding is contrary to the evidence.

68. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXVII(11) to Conclusion of Law XIV of the Referee and Special Master because the uncontradicted evidence establishes that the check dated December 17, 1962, was delivered to Baker & Taylor Drilling Co. through the mail without restriction, condition or limitation as to the time of cashing or depositing same, same was honored and cashed by the bank upon which drawn when presented, and not paid by the drawee bank before its date.

69. The District Court erred in adopting the recommended Order of the Referee and Special Master signed October 26, 1964, because such Order, and each part thereof, was beyond the jurisdiction of the District Court.

70. The District Court erred in adopting the recommended Order of the Referee and Special Master signed

October 26, 1964, because the District Court and the Referee and Special Master had neither the jurisdiction, right, power or authority to enjoin or restrain Baker & Taylor Drilling Co. from pursuing personal actions against J. D. Amend, nor from pursuing lien actions against J. D. Amend's interest in the Wilbanks Well on Section 2, and his interest in the lease incident there-to agreed to be assigned to him by Phillips Petroleum Company, and was without jurisdictional right, power and authority to determine and adjudicate personal rights as between Baker & Taylor Drilling Co. and J. D. Amend.

71. The District Court erred in adopting the recommended Order of the Referee and Special Master signed October 26, 1964, because such Order was predicated upon erroneous Findings of Fact.

72. The District Court erred in adopting the recommended Order of the Referee and Special Master signed October 26, 1964, because the Order is not supported by facts but disregards established and uncontradicted facts under which and which make the Order clearly wrong.

73. The District Court erred in adopting the portion of the recommended Order of the Referee and Special Master signed October 26, 1964, being the second decretal paragraph of the Order beginning with "IT IS FURTHER ORDERED that in the event Tri-State Petroleum, Inc." and ending with "The Special Master's Findings of Fact and Conclusions of Law," because same was outside the jurisdiction of the District Court and was outside the jurisdiction of the Referee and Special Master, and the District Court and Referee and Special Master were without jurisdictional power or authority to so adjudicate, being without jurisdiction of

the subject matter and without jurisdiction of Baker & Taylor Drilling Co., and the District Court and Referee and Special Master did not have jurisdictional right, power or authority to order particularly the interest of J. D. Amend in the property sold free and clear of liens and claims of Baker & Taylor Drilling Co. and as a matter of law the District Court and Referee and Special Master did not have a legal right or authority to order the property sold free and clear of liens and claims against the property and particularly to order the interest of J. D. Amend in the property sold free and clear of the liens and claims of Baker & Taylor Drilling Co., or to transfer the liens and claims of Baker & Taylor Drilling Co. to funds received.

74. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXXI as to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings," for the reason that the District Court and the Referee and Special Master were without jurisdictional right, power or authority to enter such an order and to enjoin and restrain Baker & Taylor Drilling Co. as is so ordered in said paragraph, being without jurisdiction of the person of Baker & Taylor Drilling Co. for such purpose and being without jurisdiction of the subject matter of personal actions as to Baker & Taylor Drilling Co., and because such paragraph purports to adjudicate rights and claims as between J. D. Amend and Baker & Taylor Drilling Co., when the District Court and the Referee and Special Master did not have jurisdiction to do so.

75. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No.



XXXI as to the following part of the recommended Order of the Special Master, to-wit:

As to the seventh grammatical paragraph of the order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings."

because the Order contained in such paragraph is not supported by facts but is contrary to the facts and because such conclusion is an erroneous conclusion of law based upon erroneous conclusions of fact.

76. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXXI as to the following part of the recommended order of the Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings,"

because such Order is predicated upon incorrect findings of fact.

77. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXXI as to the following part of the recommended Order of the Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings,"

because, as a matter of law under the facts established, Baker & Taylor Drilling Co. was not estopped from applying the funds received by it from Tri-State



Petroleum, Inc. as it did upon the balance owing to it by Tri-State Petroleum, Inc.

78. The District Court erred in adopting the portion of the recommended Order of the Referee and Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings,"

for the reason that the District Court and the Referee and Special Master were without jurisdictional right, power or authority to enter such an order and to enjoin and restrain Baker & Taylor Drilling Co. as is so ordered in said paragraph, being without jurisdiction of the person of Baker & Taylor Drilling Co. for such purpose and being without jurisdiction of the subject matter of personal actions as to Baker & Taylor Drilling Co., and because such paragraph purports to adjudicate rights and claims as between J. D. Amend and Baker & Taylor Drilling Co., when the District Court the Referee and Special Master did not have jurisdiction to do so.

79. The District Court erred in adopting the following portion of the recommended Order of the Referee and Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings,"

because the Order contained in such paragraph is not supported by facts but is contrary to the facts and because such conclusion is an erroneous conclusion of law based upon erroneous conclusions of fact.

80. The District Court erred in adopting the following portion of the recommended Order of the Referee and Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending with "and described in these proceedings,"

because such order is predicated upon incorrect findings of fact.

81. The District Court erred in adopting the following portion of the recommended Order of the Referee and Special Master, to-wit:

As to the seventh grammatical paragraph of the Order, being the sixth decretal paragraph of the Order, beginning "IT IS FURTHER ORDERED that Baker & Taylor Drilling Co." and ending "and described in these proceedings,"

because, as a matter of law under the facts established, Baker & Taylor Drilling Co. was not estopped from applying the funds received by it from Tri-State Petroleum, Inc. as it did upon the balance owing to it by Tri-State Petroleum, Inc.

82. The District Court erred in overruling Baker & Taylor Drilling Co.'s Objection and Exception No. XXXII to the eighth grammatical paragraph of the recommended Order of the Referee or Special Master signed October 26, 1964, being the seventh decretal paragraph of such Order, because as to Baker & Taylor Drilling Co. there was no valid enforceable injunction or restraining order and because any injunction or restraining order as to Baker & Taylor Drilling Co. was beyond the jurisdiction of the District Court, and the District Court was without jurisdiction to enjoin or re-

strain Baker & Taylor Drilling Co. with respect to any property of J. D. Amend and with respect to claims and liens by Baker & Taylor Drilling Co. as against property of J. D. Amend or as against claims by Baker & Taylor Drilling Co. with respect to J. D. Amend's obligations to it.

83. The District Court erred in adopting the eighth grammatical paragraph of the recommended Order of the Referee and Special Master signed October 26, 1964, being the seventh decretal paragraph of such Order, because as to Baker & Taylor Drilling Co. there was no valid enforceable injunction or restraining order and because any injunction or restraining order as to Baker & Taylor Drilling Co. was beyond the jurisdiction of the District Court, and the District Court was without jurisdiction to enjoin or restrain Baker & Taylor Drilling Co. with respect to any property of J. D. Amend and with respect to claims and liens by Baker & Taylor Drilling Co. as against property of J. D. Amend or as against claims by Baker & Taylor Drilling Co. with respect to J. D. Amend's obligations to it.

84. The Referee and Special Master erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because such holding is contrary to law, and the District Court erred in not so holding [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

85. The District Court erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because such holding is contrary to law [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

86. The Referee and Special Master erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because under the uncontradicted evidence it was not so estopped [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

87. The District Court erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because under the uncontradicted evidence it was not so estopped [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

88. The Referee and Special Master erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because such is contrary to the evidence and is clearly wrong [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

89. The District Court erred in holding that Baker & Taylor Drilling Co. was estopped to apply payments involved as it did because such is contrary to the evidence and is clearly wrong [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

90. Under the uncontradicted facts Baker & Taylor Drilling Co. had the right to apply the Tri-State Petroleum checks as it did and the evidence fails to establish any estoppel from applying such checks as it did, and it was clearly wrong for the Referee and Special

Master to hold that it was estopped from doing so [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

91. Under the uncontradicted facts Baker & Taylor Drilling Co. had the right to apply the Tri-State Petroleum checks as it did and the evidence fails to establish any estoppel from applying such checks as it did, and the District Court erred in failing to so hold [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

92. Under the uncontradicted facts Baker & Taylor Drilling Co. had the right to apply the Tri-State Petroleum checks as it did and the evidence fails to establish any estoppel from applying such checks as it did, and it was clearly wrong for the Referee and Special Master to hold that it was estopped from doing so, and the District Court erred in not so holding [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. VI, VII, VIII, XI, XII, XIII, XXII(5)(d) and (10), XXVIII(d), XXXI to the Special Master's Report—denied].

93. The Referee and Special Master had no right, power or authority to enjoin actions by Baker & Taylor Drilling Co. as he did against J. D. Amend in courts other than the Bankruptcy Court [Baker & Taylor Drilling Co.'s Objections and Exceptions I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c) and (d), XXXI(a) and XXXII to the Special Master's Report—denied].

94. The District Court had no right, power or authority to enjoin actions by Baker & Taylor Drilling

Co. as it did against J. D. Amend in courts other than the bankruptcy court.

95. The Referee and Special Master erred in granting injunctive relief beyond that necessary to conserve and protect the debtor or debtor's estate or to protect the jurisdiction of the bankruptcy court [Baker & Taylor Drilling Co.'s Objections and Exceptions I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

96. The District Court erred in granting injunctive relief beyond that necessary to conserve and protect the debtor or debtor's estate or to protect the jurisdiction of the bankruptcy court [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

97. The Referee and Special Master erred in granting injunctive relief which he had no right, power or authority to grant [Baker & Taylor Drilling Co.'s Objections and Exceptions Nos. I, VII, XX, XXI, XXII (a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI(a) and XXXII to the Special Master's Report—denied].

98. The District Court erred in granting injunctive relief which it had no right, power or authority to grant [Baker & Taylor Drilling Co.'s Objections and Exceptions I, VIII, XX, XXI, XXII(a), XXIII, XXIV, XXV, XXVII(1), (2), (3), (4), (5)(a), (6), (7), (10), XXVIII(a), (b), (c), (d), XXXI (a) and XXXII to the Special Master's Report—denied].



IV.

**Summary of Argument.**

With due regard to brevity and limitation of space for argument, reference is here made to Statement of the Case, pages 7 to 21 of this brief, as summary.

Specifications of Error 1 to 24, 37, 40, 41, 43, 45 to 50, 51 to 54, 56 to 61, 62, 63, 69, 70, 73 to 83 and 94 to 98 present the jurisdictional questions and argument thereunder, presented collectively in the interest of brevity.

The jurisdictional questions are those set out as (1) to (7) at pages 7-8 of this brief. They fall into three different categories and will be treated in this Argument under grouping and headings as follows:

- A. Lack of jurisdiction of subject matter and of person of Baker & Taylor Drilling Co.;
- B. Lack of jurisdiction to determine rights between Baker & Taylor Drilling Co. and J. D. Amend; and
- C. Lack of jurisdiction to enjoin actions between Baker & Taylor Drilling Co. and J. D. Amend.

Specifications of Error Nos. 25 to 39, 41 to 50, 54, 55, 58 to 60, 64 to 70, 71, 72, 74, 75, 76, 77, 79, 80, 81, 84 to 93 present the questions with respect to application of payment and estoppel to apply payment, and argument will be presented here under grouping of:

- D. No estoppel of Baker & Taylor Drilling Co. to apply payments as it did.



V.

Argument.

A. Lack of Jurisdiction of Subject Matter and of Person of Baker & Taylor Drilling Co.

The Trustee's application for a show cause order and seeking injunctive relief sought to adjudicate a claim of the Trustee to title to the above mentioned property.

The Trustee, by his agents, claimed the debtor to be entitled to only 20½% of the well and lease involved. He listed 66% interest owned by others, including 25% by J. D. Amend.

As a general proposition or rule the bankruptcy court in a Chapter X proceeding does not have jurisdiction in a summary proceeding of property not owned by or in at least the constructive possession of the debtor.

Collier on Bankruptcy, 14th Ed., Vol. 6, Sec. 305, p. 576, sets out the rule as to the jurisdiction of bankruptcy courts, saying:

“Courts of bankruptcy are of statutory origin, and as previously indicated they possess only the jurisdiction and powers that are expressly or by necessary implication accorded them by statute.”

In *In re Prima Co.*, 98 F. 2d 952 (7th Cir. 1938), involving a proceeding under Sections 77A and 77B, the court held and states:

“Courts of Bankruptcy possess only such jurisdiction and powers as are expressly or impliedly conferred on them by Congress.”

We are not unmindful of Section 2 of the Bankruptcy Act (11 U.S.C. 11) which is the jurisdictional section of the general bankruptcy statute, nor are we unmindful of Section 111 through Section 116 of the Bankruptcy Act (11 U.S.C. Sec. 511-516), which are

the jurisdictional provisions of Chapter X, Bankruptcy Act. We assume that this reference to such Statutes suffices without quoting therefrom. Sections 77A and 77B of the Bankruptcy Act were replaced by Chapter X (Colliers on Bankruptcy, 14th Ed., Vol. 6, Sec. 0.06, p. 63).

While the decision in *Taubel-Scott-Kitzmilller Co. v. Fox*, 264 U.S. 426, 68 L. Ed. 770, was before enactment of Chapter X, it is applicable with respect to summary and plenary jurisdiction of bankruptcy courts. The court there held:

“Wherever the bankruptcy court had possession, it could, under the Act of 1898, as originally enacted, and can now, determine in a summary proceeding controversies involving substantial adverse claims of title under subdivision e of Sec. 67, under subdivision b of Section 60, and under subdivision e of Section 70. But in no case where it lacked possession could the bankruptcy court, under the law as originally enacted, nor can it now (without consent) adjudicate in a summary proceeding the validity of a substantial adverse claim. In the absence of possession, there was, under the Bankruptcy Act of 1898, as originally passed, no jurisdiction, without consent, to adjudicate the controversy even by a plenary suit.”

In *Cline v. Kaplan*, 323 U.S. 97, 89 L. Ed. 99 (1954) it is held:

*“A bankruptcy court has the power to adjudicate summarily rights and claims to property which is in the actual or constructive possession of the court. Thompson v. Magnolia Petroleum Co., 309 US 478, 481, 84 L. Ed. 876, 879, 60 S.Ct. 628, 42 Am. Bankr. Rep. (NS) 216. If the property is not in the court’s possession and a third person asserts*

a bona fide claim *adverse to the receiver or trustee in bankruptcy*, he has the right to have the merits of his claim adjudicated 'in suits of the ordinary character, with the rights . . . and remedies incident thereto.' *Galbraith v. Valley*, 256 U.S. 46, 50, 65 L.Ed. 823, 824, 41 S.Ct. 415; *Kitzmillier Co. v. Fox*, 264 US 426, Rep (NS) 912. But the mere assertion of an adverse claim does not oust a court of bankruptcy of its jurisdiction. *Harrison v. Chamberlin*, 271 US 191, 194, 70 L.Ed. 897, 899, 46 S. Ct. 467, 7 Am Bankr Rep (NS) 719. It has both the power and the duty to examine a claim adverse to the bankrupt estate to the extent of ascertaining whether the claim is ingenuous and substantial. *Louisville Trust Co. v. Comingor*, 184 US 18, 25, 26, 46 L.Ed. 413, 416, 22 S.Ct. 293, 7 Am Bankr Rep. 421. *Once it is established that the claim is not colorable nor frivolous, the claimant has the right to have the merits of his claim passed on in a plenary suit and not summarily.* Of such a claim the bankruptcy court cannot retain further jurisdiction unless the claimant consents to its adjudication in the bankruptcy court. *MacDonald v. Plymouth County Trust Co.*, 286 US 263, 76 L.Ed. 1093, 52 S.Ct. 505, 20 Am Bankr Rep (NS) 1."

In *Harrison v. Chamberlin*, 271 U.S. 191, 70 L. Ed. 897, it is stated:

"It is well settled that a court of bankruptcy is without jurisdiction to adjudicate in a summary proceeding a controversy in reference to property held adversely to the bankrupt estate, without the consent of the adverse claimant; but resort must be had by the trustee to a plenary suit. (Citing cases) However, the court is not ousted of its jurisdiction by the mere assertion of an adverse

claim; but, having the power in the first instance to determine whether it has jurisdiction to proceed, the court may enter upon a preliminary inquiry to determine whether the adverse claim is real and substantial or merely colorable. And if found to be merely colorable the court may then proceed to adjudicate the merits summarily; but if found to be real and substantial it must decline to determine the merits and dismiss the summary proceeding."

In *In re Meiselman*, 105 F. 2d 995 (CCA 2d) it was held:

"It is now settled that if there is a real and substantial controversy of law or fact as to property held adversely to a bankrupt—'a contested matter of right, involving some fair doubt and reasonable room for controversy'—the bankruptcy court is 'without jurisdiction' to adjudicate the matter, but the trustee must have resort to a plenary suit."

In *In re Lake's Laundry*, 79 F. 2d 326 (CCA 2d) it is held:

"But, even though section 77B is a remedial statute to be construed liberally, we think Congress did not intend to ignore the distinction between property mortgaged by a debtor and property held by debtor as conditional vendee. The distinction has been recognized in legislation from early times, and was a part of the common law. The fact that Congress expressly included the words 'conditional sale agreement' in subdivision (o) (6) of section 75 of the act, 11 USCA, Sec. 203 (o) (6), and omitted any reference to conditional sales in subdivision (c) (10) of section 77B of the act, 11 USCA, Sec. 207(c)(10), is significant and points to the conclusion that it meant in this instance to

exclude property in the possession of the debtor whose rights therein were only those of a conditional vendee. We should not ignore the distinction.”

In *Thompson v. Terminal Shares*, 104 F. 2d 3 (CCA 8th 1939) the court stated:

“To sustain the lower court’s jurisdiction of this suit would do violence to the general policy of Congress that persons shall not be subjected to civil suits except in the districts of which they are inhabitants. Sec. 51 of the Judicial Code, 28 U.S.C. Sec. 112, 28 USCA Sec. 112; Sec. 23 of the Bankruptcy Act, 11 U.S.C. Sec. 46, 11 USCA Sec. 46; *Robertson v. Labor Board*, 268 U.S. 619, 627, 45 S.Ct. 621, 69 L.Ed. 1119. The language used by Congress in Section 77, in conferring jurisdiction upon the courts of bankruptcy, does not, in our opinion, indicate any intention to abandon that policy with respect to such suits as this. Compare *United States v. Sweet*, 245 U.S. 563, 572, 38 S.Ct. 193, 62 L.Ed. 473; *First National Bank of Wellington v. Chapman*, 173 U.S. 205, 214, 19 S.Ct. 407, 43 L.Ed. 669; *Ex Parte Crow Dog*, 109 U.S. 556, 572, 3 S.Ct. 396, 27 L.Ed. 1030; *In Re Prima Co. Supra* (98 F.2d 952, 958). We think that the jurisdiction conferred by Section 77 upon the courts of bankruptcy is not to be regarded as general, plenary, nationwide jurisdiction at law and in equity over all questions incident to the collection of the claims of the debtor against third persons, but is to be considered as the traditional jurisdiction of such courts over the property of a bankrupt, wherever located, freed, however, from those limitations which made ancillary proceedings in other districts necessary, and with the powers which Federal equity courts exercise in receiver-

ship proceedings, so far as those powers may be necessary or appropriate in order to preserve and safeguard the property in the actual or constructive possession of debtors and in order to carry on their business pending reorganization.”

In *In re Standard Gas & Electric Co.*, 119 F. 2d 658 (CCA 3rd 1941) it was held:

“The jurisdiction which is exercised by courts of bankruptcy in summary form has uniformly been held to extend only to the person of the bankrupt and to property in his possession or in the possession of third persons who do not claim adversely to him or whose claims are colorable only. See *Taubel-Scott-Kitzmiller Company, Inc. v. Fox*, 264 U.S. 426, 44 S.Ct. 396, 68 L.Ed. 770. In that case, Mr. Justice Brandeis said (264 U.S. pages 430, 431, 44 S. Ct. page 398):

‘Congress has, of course, power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters relating to bankruptcy its power is paramount. Hence, even if the property is not within the possession of the bankruptcy court, Congress can confer upon it, as upon any other lower Federal court, jurisdiction of the controversy, by conferring jurisdiction over the person in whose possession the property is. Congress has, also and subject to the constitutional guaranties, power to determine to what extent jurisdiction conferred, whether through possession of the res or otherwise, shall be exercised by summary proceedings and to what extent by plenary suit. But Congress did not, either by Section 2, Section 23 of the Bankruptcy Act of 1898 . . ., or any other provision of the Act, confer generally such broad jurisdiction over claims by a trustee against third persons.’



“In Section 77B Congress likewise did not by any express language confer broad jurisdiction over claims by a debtor or its trustee against third persons. We think that such jurisdiction is not to be implied from the grant of jurisdiction over the debtor’s property, but that the latter jurisdiction is essentially similar in nature to that possessed by courts of bankruptcy over the property of bankrupts.”

Also in point and applicable are the cases of *In re Patten Paper Co.*, 86 F. 2d 761; *Reighardt v. Higgins Enterprises*, 90 F. 2d 569; and *Buss v. Long Island Storage Warehouse Co.*, 64 F. 2d 338, which are referred to.

That any submission by J. D. Amend to the jurisdiction of the Bankruptcy Court would not affect Baker & Taylor Drilling Co. and its rights to have its rights and claims adjudicated in a plenary suit rather than a summary proceeding is established by the decision in *Bay City Shovels, Inc. v. Schueler*, 245 F. 2d 73 (6th Cir. 1957).

It is submitted and urged that under the circumstances presented in this Record the Special Master and the Bankruptcy Court were without jurisdiction of the property in question. They certainly were without jurisdiction of the property to which the debtor had no conceivable claim. They certainly were without jurisdiction to adjudicate as between Baker & Taylor Drilling Co. and J. D. Amend as to the property owned by J. D. Amend to which the debtor had no conceivable claim. They certainly were without jurisdiction as to Baker & Taylor Drilling Co. as to the property to which the bankrupt had no conceivable claim and as to rights between Baker & Taylor Drilling Co. and J. D. Amend.

B. Lack of Jurisdiction to Determine Rights as Between Baker & Taylor Drilling Co. and J. D. Amend.

Any controversy as between J. D. Amend and Baker & Taylor Drilling Co. as to the rights between them is wholly unrelated to the purposes of the Bankruptcy Act or the purposes of this proceeding. Baker & Taylor Drilling Co. was not hailed into court by the Trustee's application for show cause order or by the show cause order or even by any pleading or process of J. D. Amend or in fact by any process for the purpose of adjudication of liability and obligations of J. D. Amend to it. Baker & Taylor Drilling Co. has not consented to the jurisdiction of this Court for the purpose of adjudicating the liabilities and obligations of J. D. Amend to it, but on the other hand has consistently protested the existence of any jurisdiction for any such purpose. The first manifestation of attempt to exercise any purported jurisdiction of liabilities and obligations of J. D. Amend to Baker & Taylor Drilling Co. came through the Special Master's report, recommendations and findings of fact and conclusions and proposed order after the July 1 hearing. Under the authorities hereinabove set out, no jurisdiction exists to such end and nowhere under the Bankruptcy Act nor under any other statute is any such jurisdiction granted. No predicate, by pleading or otherwise, process or otherwise, notice or otherwise, exists for the exercise of such jurisdiction.

A concise statement of the rule and authorities with respect to jurisdiction of the Bankruptcy Court of persons and over matters concerning which the bankrupt's estate has no interest is reflected in Collier on Bankruptcy, 14th Ed., Vol. 6, p. 587:

“Ordinarily a court of bankruptcy will not take jurisdiction of a controversy between two parties over a matter concerning which the trustee of the

bankrupt estate has no interest. See *Matter of Patten Paper Co., Ltd.* (CCA 7th, 1936) 32 Am. B.R. (N.S.) 691, 86 F.2d 761; *Morrison Rockhill Improvement Co.* (CCA 10th 1937) 34 Am. B.R. (N.S.) 593, 91 F.2d 639; *Matter of Lubliner and Trinz Theaters, Inc.* (CCA 7th, 1938) 38 Am. B.R. (N.S.) 650, 100 F.2d 646, noted (1939) 7 U.Chi.L.Rev. 159 \* \* \* \* \*However a court of bankruptcy—although it is a court of equity and has certain plenary jurisdiction—does not have plenary jurisdiction in equity to decide controversies between third persons having no relation to the reorganization proceedings. *Sylvan Beach, Inc. v. Koch* (CCA 8th, 1944) 55 Am. B.R. (N.S.) 409, 140 F.2d 852. See also Sec. 3.18, *infra*.”

In 11 *Remington on Bankruptcy* (1961 Ed.) Sec. 4370, it is stated:

“Chapter X, like its predecessor, Section 77B, confines itself to adjustments between the debtor and its creditors. Legal transactions with third parties are left to those courts which have cognizance of them generally. And while a claim by debtor against a third person is property of the debtor, and as such, the reorganization court may direct its prosecution by the trustee if appropriate to effect the debtor’s reorganization, it is a species of property which may only be realized upon for the benefit of the debtor and its creditors by the successful prosecution of a plenary suit against the third persons involved, and not through summary proceedings. Claims which do not involve the debtor or its property are not within the court’s jurisdiction. The court will not take jurisdiction of collateral disputes between third parties unless their settlement is a necessary step in reorganization.”

The rule is stated in *Sylvan Beach v. Koch*, 140 F. 2d 852 (8th Cir. 1944) in a Chapter X proceeding as follows:

“A court of bankruptcy is a court of equity within a limited field. It has, however, no plenary jurisdiction in equity. *Smith v. Chase National Bank*, 8 Cir., 84 F.2d 608, 614, 615; *United States v. Killoren*, 8 Cir. 119 F.2d 364, 366. It has jurisdiction to adjudicate controversies related to property of which it has actual or constructive possession. *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 481, 60 S.Ct. 628, 84 L.Ed. 876. *It has no jurisdiction to hear and determine controversies between adverse third parties which are not strictly and properly part of the proceedings in bankruptcy.* *Brumby v. Jones*, 5 Cir., 141 F. 318, 320; *Chauncey v. Dyke Bros.*, 8 Cir., 119 F. 1, 3; *Brockett v. Winkle Terra Cotta Co.*, 8 Cir. 81 F. 2d 949, 952; *Smith v. Chase National Bank*, 8 Cir. 84 F.2d 608, 615; *Morrison v. Rockhill Imp. Co.*, 10 Cir., 91 F.2d 639, 642.”

In *Kaplan v. Guttman*, 217 F. 2d 481 (9 Cir. 1954) this Honorable Court quoted with approval and encompassed the rule above quoted from *Sylvan Beach v. Koch*. This Court further held in *Kaplan v. Guttman*:

“It is an axiom that consent cannot provide jurisdiction. Only where Congress has conferred power on the court to hear and determine a particular kind of controversy, can adverse parties consent to exercise of judicial authority over persons or rights. But it has been seen here, no mandate has been given by law to settle this dispute between third parties as to property in which the bankrupt has neither right, title nor possession. Consent is of no avail.”

*Smith v. Chase National Bank*, 84 F. 2d 608 (8 Cir., 1936) and the other cases cited in *Sylvan Beach v. Koch, supra*, hold as in *Sylvan Beach v. Koch, supra*.

The Special Master's Order of October 26, 1964, which was approved and adopted by the Judge and District Court, orders that Baker & Taylor Drilling Co. is estopped, and enjoins and restrains it, from filing, prosecuting or taking any action in any court of any other jurisdiction than the court below (*i.e.* the United States District Court for the Southern District of California, sitting as a bankruptcy in the bankruptcy proceeding) against *J. D. Amend* or Tri-State Petroleum, Inc., based upon its claim growing out of the drilling of the gas well. The debt to Baker & Taylor Drilling Co. arose by a contract between J. D. Amend and Baker & Taylor Drilling Co. The obligation to Baker & Taylor Drilling Co. was owed it by J. D. Amend and not by Tri-State Petroleum, Inc. Baker & Taylor Drilling was not within the territorial jurisdiction of the lower court. It had not submitted to the jurisdiction of that court. It had not been hailed into court as to rights as between it and J. D. Amend. Determination of rights between Baker & Taylor Drilling Co. was not incident or necessary to any matter involving the debtor. The Special Master and ultimately the District Court have attempted to adjudicate and determine a cause of action between two third parties who were not before it for any such purpose, and which cause of action was not involved and not before them. Such was not within the jurisdictional power or authority of the Special Master or the District Court.

**C. Lack of Jurisdiction to Enjoin Actions by Baker & Taylor Drilling Co. Against J. D. Amend.**

It is urged that any suit by Baker & Taylor Drilling Co. against J. D. Amend for debt would not involve or concern Tri-State Petroleum, Inc. or any of its property. A money judgment by Baker & Taylor Drilling Co. against J. D. Amend could not affect the debtor or the debtor's estate. It is in no wise necessary that this Court or the Referee and Special Master enjoin personal actions by Baker & Taylor Drilling Co. against J. D. Amend for a money debt or enjoin foreclosure by Baker & Taylor Drilling Co. of lien against the interest of J. D. Amend in the property in question in order to protect the debtor, the debtor's estate or the Trustee, nor is it within the jurisdiction of the court to do so. Under no conceivable stretch of the imagination is it necessary that Baker & Taylor Drilling Co. be enjoined for personal actions of J. D. Amend for money judgment in order to fully and adequately protect the debtor and any claim or interest which it has. At no place in the Bankruptcy Act, either Chapter X or otherwise, is there any statutory provision granting any jurisdiction in the bankruptcy court, or granting any right to an injunction such as the Referee or Special Master undertakes.

Section 116(4) provides that the court may:

“Enjoin or stay until final decree the commencement or continuation of a suit against a debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor.”

That section certainly does not authorize an injunction against Baker & Taylor Drilling Co. from pursuing a suit against J. D. Amend for a money judgment.

28 U.S.C. Sec. 2283, entitled “Stay of State Court Proceedings” reads as follows:



“A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect of effectuate its judgments.”

The Acts of Congress which clothe the Bankruptcy Court with powers to issue injunctions are above mentioned. It is important to note that Section 116(4) of the Bankruptcy Act provides for the issuance of injunctions to stay suits *against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor*. A personal action for debt by Baker & Taylor Drilling Co. against Amend is clearly without the injunctive scope of the Bankruptcy Court under that Section.

In 11 Remington on Bankruptcy (1961 Ed.) Section 4389, it is stated:

“Acting under the rule that the reorganization court should control all litigation against the debtor except in very special cases, the Chapter X courts have entered stays in a number of fact situations. For example, it has been held that suits between creditors as to the validity and priority of their respective liens on a debtor’s property cannot be maintained after a general stay. . . .

“Suits against officers of the debtor corporation will not be stayed, ordinarily. Such a suit should be stayed, however, notwithstanding the corporation is not a party, if its property will be affected by the judgment or decree. A court of bankruptcy is without jurisdiction or power to grant an injunction restraining an execution sale of property owned individually by an officer of the debtor. Even though a state court suit against the president and secretary of the debtor in reorganization on their

guaranty of the debtor's obligations may have an indirect repercussion in the reorganization proceeding in the Bankruptcy Court, the court does not have the power to stay such suit. . . .”

In *In re Magnus Harmonica Corp.*, 233 F. 2d 803 (3rd Cir. 1956), the District Court had issued, in a Chapter X reorganization proceeding, an injunction to stay a suit brought against the president and secretary of the bankrupt corporation. The two officers of the corporation had guaranteed obligations of the corporation, and the obligee of the guaranty filed suit in a state court in New Jersey against the officers on the contract of guaranty. After that state court suit was stayed by an order of the district court, the present motion was then filed seeking to stay the bankruptcy court's injunctive order pending an appeal thereof from such order. The court quotes 28 U.S.C. Sec. 2283, above quoted, and says that it is of the clear opinion that the motion to stay the injunction must be granted. This court says that if there is any reason at all for the injunction against the state court suit, it is under the provision granting power to grant such an injunction where it is in aid of jurisdiction of the Federal court. The opinion then quotes from a United States Supreme Court decision of *Calloway v. Benton*, 93 L. Ed. 553, where it is stated that Congress by no means intended to give the Bankruptcy Court exclusive jurisdiction over all matters and controversies that in some way affect the debtor's estate. The court after quoting 28 U.S.C. Sec. 2283, above quoted, stated:

“If there is any basis for the injunction against the state suit here, it is under the permission to grant it where it is in aid of the jurisdiction of the Federal court. The Federal court has, of course, jurisdiction in the bankruptcy matter. But, as stated by Chief Justice Vinson for the Supreme Court

in *Callaway v. Benton*, 1949, 336 U.S. 132, 142, 69 S.Ct. 435, 441, 93 L.Ed. 553, 'there can be no question, however, that Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate . . .'

*"It may be granted that this suit against the Magnus defendants may have an indirect repercussion in matters involved in the bankruptcy proceedings. It is suggested, for instance, that Finn Magnus has reversionary rights to certain patents now licensed to the corporation and if a creditor got hold of those rights it would greatly embarrass the reorganization."* (Emphasis added.)

In *In re Magnus Harmonica Corporation*, 237 F. 2d 867 (3rd Cir. 1956) is the appeal from the bankruptcy court's order enjoining the state court suit discussed in the above case. The court says that the only question for it to decide is whether the injunction was one which was necessary to protect the jurisdiction of the Bankruptcy Court. If not, the court says, it is forbidden by the provisions of Section 28 U.S.C. Sec. 2283. The court notes that the defendants here are officers of the corporation being sued in their individual capacities on a contract of guaranty which is broad enough to permit suit against them without first resorting to the primary obligor. The court's opinion reads in part as follows:

*"Counsel for the Magnuses make much of the fact that a surety has a right both under the law of New Jersey and generally to be exonerated by the principal debtor before he pays the creditor and to subrogation to the creditor's rights after he pays. Exoneration, it is said, is an equitable right which the surety has against the principal debtor to compel the latter to shoulder the obligation instead of foisting it on the surety."*

The court then points out that it need not decide whether there is any procedure in the bankruptcy court to permit the corporate officers to assert their rights to be exonerated. Important language is the following:

“We need not decide whether there is any procedure in the bankruptcy court by which the Mag-nuses can force the estate to exonerate them pro rata. If not, that is one of the unfortunate consequences of guaranteeing the debt of one who goes bankrupt. *Assuming arguendo that the equity of exoneration cannot be enforced and that to en-join the state suit would protect the sureties, it does not follow that an injunction is necessary to protect the jurisdiction of the bankruptcy court.*”

The court then discussed specific provisions of the Bankruptcy Statute which deal with the right of subrogation for a surety who pays the principal's debt. After quoting Section 57, Subdivision i (11 U.S.C.A. sec. 93) to the Bankruptcy Act, which provides that a surety can file a claim with the Bankruptcy Court in the name of the creditor, the court says:

“This quoted section is the statutory limitation upon a surety's proof of claim in the Bankruptcy Court. But that court, nevertheless, has full control over all the assets of the bankrupt. *That control is unaffected by whatever goes on outside the Bankruptcy Court in litigation between one of the bankrupt's creditors and a party who had independent liability on one of the bankrupt's contracts.*”

In *In re Diversey Building Corp.*, 86 F. 2d 456 (7th Cir. 1936) (cert. den. in *Diversey Building Corp. v. Weber*, 81 L. Ed. 870, 300 U.S. 662, 57 S. Ct. 492), the debtor had issued bonds secured by a deed of trust on its property and one Becklenburg had unconditionally guaranteed payment of the bonds. Webber, the

holder of one of the bonds, had sued Becklenburg in state court. Thereafter the debtor filed for corporate reorganization under Section 77B of the Bankruptcy Act. The debtor filed, in the district court, a petition for restraining order. Webber ultimately denied the court's jurisdiction to restrain him from proceeding against Becklenburg. The Master granted injunction perpetually enjoining Webber and others from prosecuting any suits against either the debtor or Becklenburg on account of any of the bonds. On appeal it was held that the court had exceeded its jurisdiction in enjoining Webber from suit against Becklenburg, holding that the court's power to enjoin did not extend beyond the power of the court to protect its jurisdiction and its orders which do not exceed the limitation of its jurisdiction. Quotation of the court's discussion of the matter is supplied herewith for ready reference as Appendix Exhibit 9.

The Bankruptcy Court has no plenary jurisdiction in equity but is confined in the application of the rules and principles of equity to the jurisdiction conferred upon it by the Bankruptcy Act, reasonably interpreted. *United States v. Killoren*, 119 F. 2d 364 at p. 366 (8th Cir. 1941); *Smith v. Chase National Bank*, *supra*; to the same effect is *Sylvan Beach v. Koch*, *supra*.

In *In re Commonwealth Bond Corporation*, 77 S.W. 2d 308 (CCA 2d 1935) at pages 309 and 310 the court held in a 77B proceeding:

"Stays must be ancillary to the main purpose of the proceeding and are not lawful when they cannot contribute to the execution of the plan."

In *In re Nine North Church Street, Inc.*, 82 F. 2d 186 (CCA 2d 1936), a Section 77B proceeding, the court stated:

"The Bankruptcy Act points out the limitations on the court's power to enjoin. Suits against the debtor



or to enforce any lien on his estate may be restrained. Section 77B (c) (10), 11 U.S.C.A. Sec. 207 (c) (10). An indefinite power to enjoin in aid of the court's jurisdiction is granted by Section 262 of the Judicial Code (28 U.S.C.A. Sec. 377). Section 2 (15) of the Bankruptcy Act (11 U.S.C.A. Sec. 11 (15)) gives bankruptcy courts power to make orders necessary for the enforcement of the provisions of the act. *But that the writ of injunction can be exercised beyond the dictates of necessity is denied by Section 265 of the Judicial Code (28 U.S.C.A. Sec. 379).*"

Argument and Authorities under Subdivision B Lack of Jurisdiction to Determine Rights as Between Baker & Taylor Drilling Co. and J. D. Amend, foregoing herein, are applicable to and are here referred to. The Order enjoining and restraining Baker & Taylor Drilling Co. from taking action in any other court against J. D. Amend, if effective, is by injunctive action to restrain Baker & Taylor Drilling Co. from pursuing a course of action against J. D. Amend, which cause of action was never within the jurisdiction of the Special Master or the lower court, which does not in any manner involve the debtor or the debtor's property and as between the parties not before the court for any such purpose. No such jurisdiction, power or authority has been conferred on the Special Master or the Court.

**D. No Estoppel of Baker & Taylor Drilling Co. to Apply Payments as It Did.**

Reference is made to "C" Statement of Facts under Statement of the Case. pages 9 to 22 of this brief, for full discussion of the three checks involved and dates of receipt, deposit and application thereof.

Baker & Taylor Exhibits K and L offered and received [TR. 8—July 1 hearing] reflect the full and



complete accounts with respect to the two wells, showing date of receipt of, deposit of and application of each check. These exhibits tell the story in detail of receipts, deposits and application of the three checks of Ti-State Petroleum, Inc. of \$20,000.00 each, which were received by Baker & Taylor Drilling Co. A copy of each Exhibit K and L is attached to this brief as Appendix Exhibits 5 and 6, respectively. Also supplied herewith as Appendix Exhibit 8 is Exhibit M which refers to original records which support Exhibits K and L. Exhibit M was offered and received in evidence at page 8 of Transcript of July 1 hearing.

J. D. Amend testified time and again that he did not direct Baker & Taylor Drilling Co. as to any application or as to how any check was to be applied [Amend Depo. 31, 32—TR. 51, 52, 53—March 24-25 hearing; TR. 108—July 1-2 hearing].

J. D. Amend testified that he had no instruction from Tri-State as to application of payments [Amend Depo. 29].

H. F. Schlittler, President of Tri-State Petroleum, Inc., testified with respect to the issuances of the three \$20,000.00 checks and was the only person connected with Tri-State who testified, testified that he did not direct anything to Baker & Taylor Drilling Co. with respect to application of payments [R. 167, 168—TR. March 24 hearing].

While three \$20,000.00 checks of Tri-State Petroleum, Inc. were received by Baker & Taylor Drilling Co., the court does not need concern itself with Check No. 142 for \$20,000.00 because that check, on its face, directed application to the account of the Wilbanks Well on Section 2 and was so applied, as the Trustee and J. D. Amend contend it should have been, and as the Special Master and Court found it should have been

applied. The court is concerned with the application of Checks Nos. 127 and 156. There is no relationship between the dates shown on the three checks and the dates on which they actually were received by Baker & Taylor Drilling Co. They were not received in the order which the date on the check bore [see Appendix Exs. K and L].

The findings upon which the Special Master predicated his Finding and Conclusion of Estoppel and his Order thereon are Findings of Fact Nos. V, VI, VIII and XXVII, in which the Special Master found:

in Finding of Fact No. V the execution of the contract for the drilling of the Nusbaum Well on Section 54, that the total charge therefor was \$70,036.63, that Amend delivered three checks totaling \$40,000.00 payable to Amend and endorsed by him and left a balance of \$30,036.63 due Baker & Taylor Drilling Co. from Tri-State Petroleum, Inc. for the drilling of that well, that Amend was not aware and not informed that all of those costs had not been paid;

in Finding of Fact No. VI that Tri-State Petroleum, Inc., pursuant to oral agreement with Amend to advance the drilling costs for the Wilbanks Well on Section 2, mailed Amend the check dated December 15, 1962, in the sum of \$20,000.00, payable to Baker & Taylor Drilling Co. and marked on the stub "*on account of Section 2*" that Amend immediately took the check to Roy Bulls, Secretary to Baker & Taylor Drilling Co., and delivered it to him and at the time of such delivery Amend stated to Bulls that Tri-State had agreed to pay the \$60,000.00 drilling costs for the Wilbanks Well, that he did not want to carry a further interest in the well and that he could not afford to, and that if Tri-State didn't come up with the money, he wanted to be informed about it, that he had some other people he thought would buy the interest, and

that Bulls then and there told Amend that he would notify him whether or not his company received further payment, and that within a few days Bulls called Amend and told Amend that his company had received a third check from Tri-State in the sum of \$20,000.00 or a total of \$60,000.00, that while the check dated December 15, 1962 made payable to Baker & Taylor Drilling Co. was delivered through Amend, the other two checks each were mailed directly to Baker & Taylor Drilling Co., that there was no statement on the checks indicating the purpose for which they were delivered, that the total drilling costs of the Wilbanks Well was the sum of \$57,200.00, that had the three \$20,000.00 checks been applied toward the drilling of the Wilbanks Well, as intended by Tri-State and J. D. Amend, there would have been an overpayment of \$2800.00 for the drilling costs, that when Baker & Taylor received the check dated December 17 it was applied upon the Nusbaum Well and when the check dated December 20, 1962, was received, \$10,036.63 of it was applied on the Nusbaum Well, that the application of the funds to payment of the Nusbaum Well was without knowledge of Tri-State or J. D. Amend;

in Finding of Fact No. VIII, that the three \$20,000.00 checks were mailed to Amend and Baker & Taylor in the manner described above for the purpose of paying drilling costs on the Wilbanks Well and to enable Tri-State to acquire  $\frac{3}{4}$  interest in that well from Amend, when the terms of that letter had been complied with, that Baker & Taylor was informed and knew on or about December 15, 1962, that the checks were mailed by Tri-State for the purposes above, and notwithstanding this knowledge and request to so apply from J. D. Amend, applied a portion of said payments to the Tri-State account for the drilling of the Nusbaum Well, that thereafter Baker & Taylor misinformed

J. D. Amend as to the application of the funds and withheld the true facts from Amend and Tri-State to their disadvantage and detriment, and "that by reason of the above, Baker & Taylor Drilling Company are estopped from asserting a claim against J. D. Amend and/or Tri-State Petroleum, Inc., or from asserting a lien against the gas well or leasehold interest on Section 2 in any sum whatsoever." Baker & Taylor Drilling Co. "have" been overpaid for the drilling this gas well in the sum of \$2800.00; and

in Finding of Fact XXVII that the claim of Baker & Taylor under the drilling contract with J. D. Amend has been paid in full by money furnished by Tri-State Petroleum, Inc. pursuant to its agreement with J. D. Amend.

The Special Master's Findings of Fact Nos. I through VIII are reflected in the Record, pages 176 to 182; Finding of Fact No. XXVII is reflected in the Record, pages 189, 190. Reference is here made to the Record at such pages for the full text of such Findings.

By Conclusion of Law No. III the Special Master concluded that the claim and defense of estoppel asserted by the Trustee and J. D. Amend against the claim of Baker & Taylor Drilling Co. by virtue of the information received by it from J. D. Amend on or about December 15, 1962, to the effect that Tri-State Petroleum, Inc. was to pay the drilling costs of the gas well, and by request of J. D. Amend to be advised as to whether or not future payments were made upon the cost of the well, and the statement by Roy Bulls to J. D. Amend that the drilling costs had been so paid, was found to have been made in the Finding of Facts, are true and are sufficient to sustain the plea of estoppel and does estop Baker & Taylor Drilling Co. from applying the funds received from Tri-State Petroleum,

Inc. upon the balance due it from Tri-State Petroleum, Inc. for the drilling of the well on Section 54. Such Conclusion of Law No. III is reflected at pages 190 and 191 of the Record.

Baker & Taylor Drilling Co.'s Objections and Exceptions to Findings of Fact V, VI, VII and VIII are its Objections and Exceptions Nos. VI, VII, VIII and IX reflected at pages 205 to 208 of the Record, are to the effect that each such Finding is not supported by any evidence, is contrary to the evidence and is clearly wrong. Its Objection and Exception to Finding of Fact XXVII is its Objection and Exception XXII reflected at pages 213 and 214 of the Record. Its Objection and Exception to Conclusion of Law III is its Objection and Exception No. XXVII(5) reflected at page 219 of the Record. Reference is made to the Record and the aforesaid pages for the Objections and Exceptions.

By the Special Master's Order it is ordered that Baker & Taylor Drilling Co., its assignees or anyone acting for or in its behalf, is estopped and enjoined and restrained from filing, prosecuting or taking any action in any court, other than the court below, based on any of its claim growing out of the drilling of the gas well. Baker & Taylor Drilling Co.'s Objection and Exception to that portion of the Order, insofar as the estoppel question is concerned, is its Objection and Exception No. XXXI reflected at pages 224 and 225 of the Record. Reference is here made to the Record for the full text of such Objection.

The Special Master predicated his conclusion of estoppel primarily on testimony of J. D. Amend. If any estoppel arose, and it is earnestly urged that none did arise, it would have had to arise as a result of testimony of J. D. Amend and Roy Bulls. The substance of J. D. Amend's testimony, when viewed in its most favorable light of the Special Master's Findings, is that



at approximately December 19, 1962, he told Roy Bulls that he, Amend, didn't want to further carry an interest in the Wilbanks Well, that if Tri-State didn't come up with the money, or whoever was supposed to furnish the check, that he wanted to know it, that he had some other people he thought would buy the interest [TR. 17, 18—March 24 hearing]; that prior to December 20 he had never been informed by Baker & Taylor Drilling Co., or anyone else, that the drilling costs for the Nusbaum Well had all been paid; that he didn't know whether all the drilling costs were ever paid [TR. 13—March 24 hearing]; that Amend told Bulls that they were supposed to pay \$60,000.00 and that he would notify Amend whether he got the checks or not, that he later had a conversation with Bulls by telephone in which Bulls told him that "he had received the third check in the amount of \$20,000.00, or a total of \$60,000.00" [TR. 17, 18—March 24 hearing]; that the reason why he told Bulls that if the \$60,000.00 was not paid he wanted to know about it was that he didn't want to carry "that interest myself unless it was paid off by those people, that he wanted to sell the interest elsewhere," and that Bulls told him he would let him know when he received checks [TR. 19, 20—March 24 hearing]; that after he received the call that the money had been received, he had no further conversation with Bulls about it [TR. 28—March 24 hearing]. In the conversation which Amend had with Bulls there wasn't any conversation as to application of payments [TR. 55, 56—March 24 hearing]. At the time Amend handed Bulls the check he didn't know of any other indebtedness which Tri-State Petroleum owed Baker & Taylor [TR. 72—March 24 hearing]. Bulls never advised Amend that the three checks had been applied to some pre-existing indebtedness [TR. 72—March 24 hearing].



At page 92 *et seq.* of the Transcript of July 1 hearing, J. D. Amend testified to the conversation with Bulls substantially as above.

J. D. Amend testified by his deposition on March 19, 1964, which deposition was introduced and received in evidence *in toto*, merely that he had delivered the one check and then asked Roy Bulls to let him know if this money came in because he wanted to sell the interest to someone else [Amend Depo. 64] and testified that he asked him "to let me know if he received \$60,000.00 for that well" and that later Bulls called him that he had received \$60,000.00 when he got the last check [Amend Depo. 64]. He then asked to correct his deposition, testifying "I said for that well. The well itself was never discussed. It was just presumption on my part that the \$60,000.00 was for this well" [Amend Depo. 65].

In the interest of brevity and length of brief, the testimony of J. D. Amend with respect to his conversations with Roy Bulls is set out and quoted in Appendix Exhibit 10.

While there is some divergence between the testimony of Amend and Bulls, it is recognized that on those items of testimony at which there is divergence this Court must view the overall testimony in its light most favorable to the Findings of Fact in the court below. The testimony of Roy Bulls, as regards the conversation and what happened between him and J. D. Amend, is likewise set out in the Appendix as Appendix Exhibit 11.

While, as hereinafter discussed, the Findings of Fact by the Special Master, upon which he purported to predicate his Conclusions and Order of estoppel, are clearly wrong as is demonstrated by the testimony of J. D. Amend and Roy Bulls supplied as Appendix Exhibits

9 and 10 respectively, even under the Special Master's Findings of Fact, if permitted to stand, as a matter of law no estoppel arose as against Baker & Taylor Drilling Co. with respect to or on account of the manner in which it made any application of payments.

The Supreme Court of Texas (1952) in *Gulbenkian v. Penn*, 151 Tex. 412, 252 S.W. 2d 929, holds:

“In order to constitute an equitable estoppel or estoppel in pais there must exist a false representation or concealment of material facts; it must have been made with knowledge, actual or constructive, of the fact; the party to whom it was made must have been without knowledge or the means of knowledge of the real facts; it must have been made with the intention that it should be acted on; and the party to whom it was made must have relied on or acted on it to his prejudice.’ ”

22 Tex. Jur., Sec. 8, pages 668, 669; and 31 C.J.S., Sec. 67, page 402, each state the rule almost verbatim as above quoted.

While it is deemed that as to the situation here involved with respect to claimed estoppel is to be measured by the Texas law, the California rule as to elements of estoppel is substantially as the Texas rule. See *California Cigarette Con. Inc. v. City of Los Angeles* (S. Ct. Cal.), 350 P. 2d 715; and *Hampton v. Paramount Pictures* (S. Ct. of Cal.), 279 F. 2d 100.

In *Rice v. Brown*, 296 S.W. 495 (Com.App. 1927), the court at page 496 states:

“The principles governing the application of payments are well known and easy of statement. First, the debtor has the right to make application of his payments, but in the event he fails to make such application, the creditor then may do so. In the event neither party makes application of the payments the court will apply them.”

In *First National Bank v. International Sheep Co.*, 29 S.W. 2d 513 (CCA. writ refused 1928) it was held that the rule above quoted is well settled. See also *Palm v. Johnson*, 255 S.W. 1007 (CCA), to the same effect.

In *Carey v. Ellis*, 46 S.W. 2d 1012 (CCA 1932), the rule as to right to make application of payment is stated as above quoted, with the court further holding and stating:

“It is only when neither party has exercised the right of appropriation that the court may assume to make appropriation for the parties.”

It is further to be noted in this case that the trial court found that it was the intention of appellees to apply the partial payment to the settlement of the note, but that inasmuch as the appellants were ignorant of this intention the same could, therefore, not affect them.

In *Shonaker v. Loan & Investment Co.*, 8 S.W. 2d 566 (CCA writ refused 1928), debtor owed a note and an item not so evidenced. The debtor testified he thought a \$30.00 payment was to be applied on the note, but did not contend that he specifically directed that the installment be applied on the note. On this point the court said:

“That being true the contractor being entitled to payment for extras and also payment on the note under the same contract was authorized in the absence of specific direction as to application of payment to apply it in payment of either of the indebtednesses held by him.”

In the *City National Bank v. Eastland County*, 12 S.W. 2d 662 (CCA 1928), it is said:

“Since the parties applied the payments no application by the court is necessary, *as the court makes application of payment only when parties have failed to do so.*”

The first sentence of Sec. 35 of 44 Tex. Jur. 2d 689 correctly states the rule:

“Neither the creditor nor the court can apply payments by one debtor to the payment of another, without the debtor’s consent.”

Texas Jurisprudence, in support of that rule, cites the case of *Rodgers-Wade Furniture Co. v. Wynn*, 156 S.W. 340 (CCA). The case states the rule:

“A creditor may elect to apply the payment to any debt of the debtor or the law may apply it for him, but the creditor in the absence of an agreement, express or implied, cannot apply the money to the satisfaction of a debt of a third person; nor, of course, would the law ever so apply it.”

In *Gourley v. Iverson Tool Co. et al.*, 186 S.W. 2d 726 (CCA, writ refused 1945) it was held that a third party, not the debtor or the creditor, had no right to direct application to be made of payments.

Section 49, page 706, 44 Tex. Jur. 2d, states the rule:

“Third persons cannot ordinarily control the application of payment by either the debtor or the creditor and neither the debtor or the creditor is required to apply them so as to benefit any third person.”

In support of the rule stated, Texas Jurisprudence cites *Scott v. Cox*, 70 S.W. 802 (Tex. Civ. App.); *Peck v. Powell*, 259 S.W. 640 (Tex. Civ. App.); and *Nelson Manufacturing Co. v. Wallace*, 66 S.W. 2d 505 (Tex. Civ. App.). All of such cases support the quoted text.

In *Peck v. Powell*, 259 S.W. 640 (CCA), the court states rules as follows:

“The rule is further stated that third persons cannot control the application of a payment by either

*the debtor or the creditor, and that neither the debtor nor the creditors need apply the payment in such manner as to benefit any third persons."*

While it is recognized that *Peck v. Powell* was reversed on other grounds, we, as do the authors of Texas Jurisprudence, think it states the correct rule, and the rules stated were not reversed.

*Wischkaemper v. Massey*, 70 S.W. 2d 771 (Tex. Civ. App. 1934), states the rule material to this proceeding:

*"The rule is that where a debtor is alone liable on one debt and jointly liable upon another, a payment by him or for him should be applied to his individual debt."*

In *Fort Worth & D. C. Ry. Co. v. Read Bros. & Montgomery*, 154 S.W. 1021 (Tex. Civ. App.) the court held:

*"Certainly a creditor had not the privilege of applying a payment made by his debtor to a debt which did not exist at the time the payment was made, but which was later incurred, in the absence of some special agreement to that effect."*

It is earnestly urged that under the testimony and even under the Special Master's Findings of Fact, if the Findings are permitted to stand, when same are measured by the legal test for estoppel, same as a matter of law simply do not constitute a basis for estoppel.

It is earnestly urged that under no conceivable theory could an estoppel arise against the application by Baker & Taylor of Check No. 127 because it was received by Baker & Taylor Drilling Co. from Tri-State Petroleum, Inc. on December 13, 1962 [R. 111—TR. March 24 hearing] and deposited by Baker & Taylor Drilling Co. on December 13, 1962 [Baker & Taylor Ex. E; TR.

113—March 24 hearing]. The Special Master found that that check was received and deposited by Baker & Taylor Drilling Co. on December 13, 1962 [R. 183]. The check was paid by the drawee bank on December 18, 1962 [TR. 112—March 24 hearing]. The incidents upon which the Special Master, and ultimately the District Court through approval of the Special Master's Report, predicated the finding and conclusion of estoppel occurred, without doubt or possible contradiction, after the receipt, deposit and application of Check No. 127. The receipt which J. D. Amend received for Check No. 142 is dated December 19, 1962. That receipt fixes as the date of the conversation between Amend and Bulls, upon which the Special Master predicated his conclusion and order of estoppel a date after Check No. 127 had been received, applied, deposited and paid by the drawee bank. That receipt is attached as Appendix Exhibit 12.

While the Special Master in Finding of Fact XII finds that the check dated December 19, 1962 "was received and deposited on December 13, 1962, or four (4) days prior to its authorized date"; [R. 183] and concludes in Conclusion of Law XIV that Baker & Taylor Drilling Co. had no authority to cash that check prior to December 17, 1962, [R. 194]; *there is absolutely no evidence* of any limitation or restriction on Baker & Taylor as regards deposit of such check. It is established by evidence not contradicted that such check was not paid by the drawee bank until December 18, 1962 [TR. 18—March 24-25 hearing; testimony of Don Bowie TR. 111, 112—March 24-25 hearing; and check. Trustee's Ex. 7]. The check was drawn on Greenfield



State Bank of Bakersfield, California. It was deposited in The First National Bank of Amarillo, Texas [Deposit Slip Baker & Taylor Ex. E, entered p. 13 TR. March 24 hearing]. Banking channels are merely a vehicle of transit for presentation of the check to the payee bank. The fact that the check was deposited in The First National Bank of Amarillo, Texas, for ultimate presentation to Greenfield State Bank, Bakersfield, California, for payment in no degree or regard limits or diminishes the fact that the amount of the check was applied to the indebtedness of Tri-State on account of its contract for the drilling of the Nusbaum Well before J. D. Amend's conversation with Roy Bulls, which was the beginning of the sequence of events upon which the Special Master and the court predicated their conclusion and holding of estoppel. There was no limitation in any regard placed upon Baker & Taylor Drilling Co. either at law or in fact as to the time it might transmit the check through banking channels for presentation to the drawee bank for payment.

Section 186 of the Negotiable Instruments Act, Article 5947, Sec. 186, Texas Revised Civil Statutes, provides that the check must be presented within a reasonable time after its issuance or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

It is the law in Texas that where a check is received as a condition payment, payment becomes absolute and relates to the date of delivery of the check when the recipient of the check actually cashes the check. Two Supreme Court cases which are authority on this point are:

*Texas Mutual Life Ins. Ass'n. v. Tolbert*, 136 S.W. 2d 584, 134 Tex. 419 (1940); and *Muldrow v. Texas Frozen Foods*, 299 S.W. 2d 275, 157 Tex. 39 (1957). The principles of the two Texas Supreme Court cases are encompassed by and set out in 70 C.J.S. 235, Sec. 24, and in 40 Am. Jur. 775, Sec. 86.

## V.

### Conclusion.

Baker & Taylor Drilling Co. submits that the Special Master and the District Court were without jurisdiction of subject matter involved and were without jurisdiction of Baker & Taylor Drilling Co. as to any matter. Further that they were particularly without jurisdiction to determine rights between Baker & Taylor Drilling Co. and J. D. Amend and particularly without jurisdiction to enjoin actions by Baker & Taylor Drilling Co. against J. D. Amend as they sought to do.

Without admitting or recognizing any jurisdiction of the Special Master or Court to act but denying jurisdiction as above urged, Baker & Taylor Drilling Co. submits that if they did have jurisdiction, nevertheless under the uncontradicted evidence and even under the Special Master's findings of fact, as a matter of law Baker & Taylor Drilling Co. was not estopped from applying the two \$20,000.00 checks as it did.

Baker & Taylor Drilling Co. prays that the judgment of the District Court denying the objection of Baker & Taylor Drilling Co. to the findings report recommendation and order of the Special Master, overruling same, adopting the findings of fact and conclu-

sions of law of the Special Master and adopting the recommended order of the Special Master be reversed and that this Honorable Court hold, decree and order that the Special Master and the District Court and each of them were without jurisdiction of the gas well on Section 2, Block 1, H&GN Survey in Hansford County, Texas, and the lease under which drilled, alternatively were without jurisdiction of the 20% interest thereof which unquestionably was owned by J. D. Amend; and were without jurisdiction of Baker & Taylor Drilling Co. to adjudicate with respect to its rights as to said property, were without jurisdiction to determine rights between Baker & Taylor Drilling Co. and J. D. Amend and were without jurisdiction to enjoin action by Baker & Taylor Drilling Co. against J. D. Amend, and that this Honorable Court order and decree that all adjudication by the Special Master and the Court below and Judge thereof, as to rights between Baker & Taylor Drilling Co. and J. D. Amend and injunctive restraint as to rights and actions between Baker & Taylor Drilling Co. and J. D. Amend and property of J. D. Amend, is ineffective. Alternatively, in the event this Honorable Court finds or holds that the Special Master and District Court, or either of them, has jurisdiction of the subject matter and persons to adjudicate with respect to the subject matter and persons with respect to which they sought to adjudicate, it hold, decree and order that Baker & Taylor Drilling Co. was not estopped to apply the \$20,000.00 check of Tri-State Petroleum, Inc. to the debt of Tri-State Petroleum, Inc., as it did. That this Honorable Court render judgment accordingly as above prayed for, alternatively that this Court remand

to the District Court with instructions accordingly, Baker & Taylor Drilling Co. prays for all other relief to which it is entitled.

Respectfully submitted,

DAVID M. GARLAND,  
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H. A. BERRY,  
UNDERWOOD, WILSON, SUTTON,  
HEARE & BERRY,  
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Amarillo, Texas 79105,  
*Attorneys for Appellant, Baker &  
Taylor Drilling Co.*

### Certificate.

We certify that, in connection with the preparation of this Brief, we have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in our opinion, the foregoing Brief is in full compliance with those rules.

DAVID M. GARLAND.









## INDEX TO APPENDIX

- Appendix Exhibit 1—Record reference to manner and place at which the questions involved are raised. (page 21 of brief)
- Appendix Exhibit 2—Check 127
- Appendix Exhibit 3—Check 142
- Appendix Exhibit 4—Check 156
- Appendix Exhibit 5—Exhibit K—shows date each check received, deposited and applied
- Appendix Exhibit 6—Exhibit L—shows date each check received, deposited and applied
- Appendix Exhibit 7—Letter from Amend to Schlittler dated February 11, 1963
- Appendix Exhibit 8—Exhibit M—refers to original records which support Exhibits K and L (page 8 of TR July 1; page 67 of brief)
- Appendix Exhibit 9—Quotation from *In re Diversey Bldg. Corp.*, 86 F.2d 456
- Appendix Exhibit 10—Testimony of J. D. Amend with respect to his conversations with Roy Bulls (p. 76 of brief)
- Appendix Exhibit 11—Testimony of Roy Bulls as regards the conversations and what happened between him and J. D. Amend (p. 76 of brief)
- Appendix Exhibit 12—Receipt to J. D. Amend for Check No. 142
- Index to Exhibits which are part of the Record.



## APPENDICES.

### APPENDIX EXHIBIT 1.

#### Record Reference to Manner and Place at Which the Questions Involved Are Raised.

Question No. (1) is raised by and under :

(a) The Special Master's Conclusion of Law I, his Conclusion of Law III (R 190), his Conclusion of Law X (R 192), his Conclusion of Law XIII (R 193), his Finding of Fact XXV (R 188, 189), his Finding of Fact XXVI (R 189), his Finding of Fact XXVII (R 189), his Finding of Fact XXVIII (R 189, 190), the Special Master's Order of October 26, 1964 (R 327-329) and particularly the sixth paragraph thereof, reading as follows :

"IT IS FURTHER ORDERED that Baker & Taylor Drilling Company, its assignee, or any one acting for or in its behalf, are estopped, and are hereby enjoined and restrained from hereafter filing, prosecuting, or taking any action in any court of any jurisdiction, other than before this Court, against J. D. Amend or Tri-State Petroleum, Inc., or the Trustee in Bankruptcy of Tri-State Petroleum, Inc., debtor, based upon its claim growing out of the drilling of the gas well mentioned and described in these proceedings."

(b) Baker & Taylor Drilling Co.'s Objection and Exception III to proposed Findings of Fact (R 158, 159); Baker & Taylor Drilling Co.'s Objection XIV to proposed Findings of Fact (R 162); Baker & Taylor Drilling Co.'s Objection No. XV to proposed Findings of Fact (R 162); Baker & Taylor Drilling Co.'s Objection No. XVI to proposed Findings of Fact (R 163); Baker & Taylor Drilling Co.'s Objection No. XVIII(2) to proposed Conclusions of Law (R 163);

Baker & Taylor Drilling Co.'s Objection No. XVIII(4) and (6) to the proposed Conclusions of Law (R 164); Baker & Taylor Drilling Co.'s Objection No. XVIII(9) and (10) to the Special Master's proposed Conclusions of Law (R 165, 166).

(c) Baker & Taylor Drilling Co.'s Objection I to the Conclusions, Findings of Fact and Order of the Special Master (R 203); Baker & Taylor Drilling Co.'s Objection VIII and Baker & Taylor Drilling Co.'s Objection No. XX to the Special Master's Finding No. XXV (R 212); Baker & Taylor Drilling Co.'s Objection No. XXI to the Special Master's Finding of Fact No. XXVI (R 213); Baker & Taylor Drilling Co.'s Objections Nos. XXIIa, XXIII, XXIV and XXV to the Special Master's Findings of Fact (R 214, 213); Baker & Taylor Drilling Co.'s Objections Nos. XXVII(1), (2), (3), (4), (5)(a), (6), (7), (9) and (10) to the Special Master's Conclusions of Law (R 217, 218); Baker & Taylor Drilling Co.'s Objection XXVII(5) to the Special Master's Conclusions of Law (R 219); Baker & Taylor Drilling Co.'s Objection No. XXVII(6) to the Special Master's Conclusions of Law (R 220); Baker & Taylor Drilling Co.'s Objection No. XXVII(7) to the Special Master's Conclusions of Law (R 220); Baker & Taylor Drilling Co.'s Objection No. XXVII(10) to the Special Master's Conclusions of Law (R 221, 222); Baker & Taylor Drilling Co.'s Objection No. XVIII(a), (b), (c), (d) and (e) to the Order of the Special Master (R 223); Baker & Taylor Drilling Co.'s Objections XXX, XXXI, XXXII and XXXIII to the Special Master's Order (R 224, 226)

(d) The order of the District Court denying and overruling the Objections and Exceptions of Baker & Taylor Drilling Co. to the Findings, Report, Recommendations of the Special Master and adopting the Find-



ings of Fact and Conclusions of Law and Order of the Special Master as the order of the trial court. (R 233, 234)

Each and all of the objections and exceptions urge lack of jurisdiction of the Special Master to determine rights and liabilities as between J. D. Amend and Baker & Taylor Drilling Co.

Question No. (2) is raised by and under the same matters as Question No. (1) is raised, and the Record references with respect to Question No. (2) are the same as set out above under Question No. (1).

Question No. (3) is raised by and under the same matters as Question No. (1) is raised, and the Record References with respect to Question No. (3) are the same as set out above under Question No. (1).

Question No. (4) is raised by and under the same matters as Question No. (1) and the Record references with respect to Question No. (4) are the same as set out above under Question No. (1).

Question No. (5) is raised by and under :

(a) Baker & Taylor Drilling Co.'s plea of lack of jurisdiction (R 141 et seq.)

(b) Baker & Taylor Drilling Co.'s Objection No. XVI to the Special Master's proposed Findings of Fact (R 163); Baker & Taylor Drilling Co.'s Objection No. XVIII (1), (3), (4), (6) and (8) to the Special Master's proposed Conclusions of Law No. II (R 163-164); Baker & Taylor Drilling Co.'s Objections Nos. A and B to the Special Master's proposed Order (R166).

(c) The Special Master's Conclusion that the objection to the summary jurisdiction should be overruled (R 174); the Special Master's Finding of Fact II (R 176); the Special Master's Conclusion of Law I (R 190).

(d) The Special Master's Order of October 26, 1964 (R 327-329).

(e) Baker & Taylor Drilling Co.'s Objection No. I to the Conclusions, Findings of Fact and Order of the Special Master (R 203); Baker & Taylor Drilling Co.'s Objection No. XX to the Special Master's Findings of Fact (R 212); Baker & Taylor Drilling Co.'s Objection No. XXI to the Special Master's Findings of Fact (R 213); Baker & Taylor Drilling Co.'s Objection No. XXIV to the Special Master's proposed Findings of Fact (R 214); Baker & Taylor Drilling Co.'s Objection No. XXV, to the Special Master's proposed Findings of Fact (R 215); Baker & Taylor Drilling Co.'s Objection No. XXVII(1), (3), (4), (5)(a), (6), (7), (9) and (10) to the Special Master's Conclusions of Law (R 217-222); Baker & Taylor Drilling Co.'s Objection No. XXVIII(a) and (b) to the Order of the Special Master (R 223); Baker & Taylor Drilling Co.'s Objection No. XXX to the Order of the Special Master (R 224); Baker & Taylor Drilling Co.'s Objection No. XXIX to the Special Master's Order (R 224); Baker & Taylor Drilling Co.'s Objection No. XXXI to the Order of the Special Master (R 225); Baker & Taylor Drilling Co.'s Objection No. XXXII to the Special Master's Order (R 226).

(f) The order of the District Court denying and overruling the Objections and Exceptions of Baker & Taylor Drilling Co. to the Findings, Report, Recommendations of the Special Master and adopting the Findings of Fact and Conclusions of Law and adopting the Order of the Special Master as the order of the trial court. (R 233, 234)

Question No. (6) is raised under and by:

(a) Baker & Taylor Drilling Co.'s plea of lack of jurisdiction (R 114); Baker & Taylor Drilling Co.'s Objection No. XVI to the Special Master's proposed Findings of Fact (R 163); Baker & Taylor Drilling Co.'s Objection No. XVIII(1) to the Special Master's proposed Findings of Fact (R 163); Baker & Taylor Drilling Co.'s Objections XXIII(3), (4) and (6) to the Special Master's proposed Conclusions of Law (R 164); Baker & Taylor Drilling Co.'s Objections to the proposed Order of the Special Master (R 166);

(b) The Special Master's Conclusion that the objection to the summary judgment of the Bankruptcy Court should be overruled (R 174); the Order of October 26, 1964, by the Special Master (R 327-329)

(c) Baker & Taylor Drilling Co.'s Objection No. I to the Special Master's Report, Findings of Fact and Order (R 203); Baker & Taylor Drilling Co.'s Objection No. XX to the Special Master's Findings of Fact (R 212); Baker & Taylor Drilling Co.'s Objection No. XXI to the Special Master's Findings of Fact (R 213); Baker & Taylor Drilling Co.'s Objection No. XXIV to the Special Master's Findings of Fact (R 214); Baker & Taylor Drilling Co.'s Objection No. XXVII (1), (2), (3), (4), (5)(a), to the Conclusions of Law of the Special Master (R 217-219); Baker & Taylor Drilling Co.'s Objections Nos. XXVII(6) and (7) to the Conclusions of Law of the Special Master (R 220); Baker & Taylor Drilling Co.'s Objection XXVII(10) to the Conclusions of Law of the Special Master (R 221,222); Baker & Taylor Drilling Co.'s Objection No. XXVIII-

(a) and (b) to the Special Master's Order (R 223); Baker & Taylor Drilling Co.'s Objection No. XXIX-(b) and (c) to the Special Master's Order (R 224); Baker & Taylor Drilling Co.'s Objection No. XXX to the Special Master's Order (R 224, 225); Baker & Taylor Drilling Co.'s Objection No. XXXI(a) to the Special Master's Order (R 225); Baker & Taylor Drilling Co.'s Objection No. XXXII to the Special Master's Order (R 226).

(d) The order of the District Court denying and overruling the Objections and Exceptions of Baker & Taylor Drilling Co. to the Findings, Report and Recommendations of the Special Master and adopting the Findings of Fact, Conclusions of Law and Order of the Special Master as the order of the trial court.

Question No. (7) is raised under and by the same matters as are set out under Questions Nos. (5) and (6), and the Record references with respect to Question No. (7) are the same as with respect to Questions Nos. (5) and (6).

Question No. (8) is raised under and by:

(a) Baker & Taylor Drilling Co.'s Objection Nos. I, II, III, IV, V, VI, VII, VIII to the Special Master's proposed Findings of Fact (R 157-161); Baker & Taylor Drilling Co.'s Objection XVIII(9) to the Special Master's proposed Conclusions of Law (R 163, 165-166).

(b) The Special Master's Findings of Fact Nos. V, VI, VIII, XII, XIII, XVI and XVII (R 178, 179, 181, 183, 184, 185).

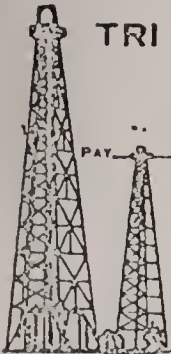
(c) The Special Master's Order of October 26, 1964 (R 327-329).

(d) Baker & Taylor Drilling Co.'s Objection Nos. VI, VII, VIII, XI, XII, XIII, XXII to the Special Master's Findings of Fact (R 204); Baker & Taylor Drilling Co.'s Objections Nos. XXVII(5)(b), (5)(d), 10 and 11 to the Special Master's Conclusions of Law (R 217, 219, 221, 222); Baker & Taylor Drilling Co.'s Objections Nos. XXVIII(c) and (d) to the Special Master's Order (R 223, 224); Baker & Taylor Drilling Co.'s Objection XXXI to the Special Master's Order (R 225, 226).

(e) The order of the District Court denying and overruling the Objections and Exceptions of Baker & Taylor Drilling Co. to the Findings, Report and Recommendations of the Special Master and adopting the Findings of Fact, Conclusions of Law and Order of the Special Master as the order of the trial court. (R 233, 234).







**TRI - STATE** *Petroleum, Inc.*

1904 TRUXTON AVENUE  
BAKERSFIELD, CALIFORNIA

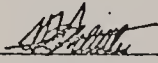

**№ 00127**

90-1891  
1222

PAY TO THE ORDER OF **NOT OVER 20000 DOLS 00 CTS**

DATE **DEC. 17, 1962** AMOUNT **20,000.00**

Baker & Taylor Drilling Co.  
P. O. Box 2748  
Marillo, Texas

BY   
BY 

⑆2220 689⑆ 02 4578⑈0⑆

HEAD OFFICE - GREENFIELD STATE BANK - BAKERSFIELD, CALIFORNIA

*Deposited 12-13-62*

THIS CHECK IS IN PAYMENT OF  
THE FOLLOWING INVOICES

DESCRIPTION	AMOUNT
TOTAL	

TRI-STATE PETROLEUM, INC.  
BAKERSFIELD, CALIFORNIA

APPENDIX EXHIBIT 2



13 (C)

90-1891  
1222

TRI - STATE Petroleum, Inc.

1064 TRUXTON AVENUE  
BAKERSFIELD, CALIFORNIA

Nº 00142

NOT OVER 20000 DOLS 00 CTS

PAY

Baker & Taylor

DATE Dec. 15, 1962 AMOUNT 20,000.00

BY *[Signature]*

BY *[Signature]*

THIS CHECK IS IN PAYMENT OF  
THE FOLLOWING INVOICES

DESCRIPTION	AMOUNT
On account, SAC 2	20,000.00
TOTAL	

TRI-STATE PETROLEUM, INC.  
BAKERSFIELD, CALIFORNIA

⑆1222⑆1891⑆ 02 4578⑆0⑆

HEAD OFFICE - GREENFIELD STATE BANK - BAKERSFIELD, CALIFORNIA

*Deposited 12-15-62*

APPENDIX EXHIBIT 3

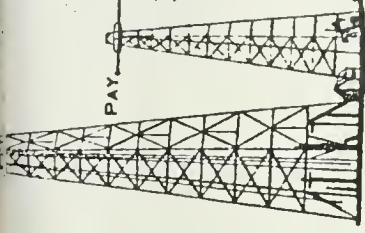


1904 TRUXTUN AVENUE  
BAKERSFIELD, CALIFORNIA

No 00156

THE SUM 2000 DOLS 00 CT.

PAY



DATE Dec. 20, 1962 AMOUNT 20,000.00

Baker & Taylor

BY *[Signature]*  
BY *[Signature]*

1222 189 02 4578 011 X

HEAD OFFICE - GREENFIELD STATE BANK - BAKERSFIELD, CALIFORNIA

APPENDIX EXHIBIT 4





BAKER & TAYLOR DRILLING COMPANY

DRILLING CONTRACT, AUGUST 24, 1962 - Tri-State Petroleum Company

NUSBAUM - SECTION 54, BLOCK 4T, T & NO, HANSFORD COUNTY, TEXAS

SPUD 8-31-62 - PERFORMANCE OF WORK COMPLETED 10-3-62

09-043

VENDOR NAME	TRANSACTIONS			B & T REFERENCE			CHECKS RECEIVED				APPLICATION			
	INVOICE NUMBER	INVOICE DATE	AMOUNT	G/L MONTH	INV. NO. OR J. E. NO.	CUSTOMER NUMBER	MAKER	ISSUED TO	CK. NO.	CHECK DATE	DEPOSIT DATE	DR.	CR.	BAL.
				9-62	8-27	8-27	Tri-State	B&T	3154	8-24-62	9-21-62			30,000.00 (30,000.00)
Southwell Supply	10-14	9-25-62	279.50	10-62	6221	912								
Southwell Supply	9-766	9-26-62	40.52	9-62	6221	912						432.85		(29,567.15)
Southwell Supply	9-671	9-28-62	12.83	9-62	6221	912								
Schlumberger	35865	9-28-62	3,390.96	1-63	63299	912						3,390.96		(26,176.19)
Rainbo Service	80680	9-30-62	275.00	10-62	62253	912								
Milton Ford & Sons	4195	10-1-62	86.30	11-62	62253	912						476.30		(25,699.89)
K & S Welding	215	10-1-62	15.00	10-62	62253	912								
Phil A. Cornell, Inc.	3800P	10-15-62	54.66	10-62	62200	912						54.66		(25,645.23)
				10-62	62194	912						67,940.63		42,295.40
				10-62	66-10	912	Tri-State	Amend	3418	10-22-62	10-26-62		5,000.00	37,295.40
				11-62	75-03	912	Tri-State	Amend	3438	10-29-62	11-2-62		5,000.00	32,295.40
Schlumberger	35865	9-28-62	(2,258.77)	5-63	63024CM	912							2,258.77	30,036.63
				12-62	89-13	912	Tri-State	B & T	127	12-17-62	12-18-62		20,000.00	10,036.63
				12-62	89-15	912	Tri-State	B & T	156	12-20-62	12-27-62		10,036.63	-0-

THE CONTRACT PROVIDES FOR THESE TERMS AND DUE DATES:

CHECKS WERE RECEIVED FOR PAYMENT AS FOLLOWS:

CONDITION	AMOUNT	TO BE PAID BY:	MAKER	CK. NO.	CK. DATE	AMOUNT	REMARKS:
Escrow before spud	30,000.00	Prior to 8-31-62	Tri-State	3154	8-24-62	30,000.00	None
			Tri-State	3418	10-22-62	5,000.00	19 days past due
			Tri-State	3438	10-29-62	5,000.00	26 days past due
Due 30 days after completion of drilling.	30,000.00	Due on 11-2-62	Tri-State	127	12-17-62	20,000.00	75 days past due
Daywork 30 days after completion of drilling	7,940.63	Due on 11-2-62					
Third party charges - 30 days	2,096.00	Due on 11-2-62	Tri-State	156*	12-20-62	10,036.63	48 days past due
	70,036.63					70,036.63	

\* This Check, No. 156, for \$20,000.00, was applied as follows:

To Nusbaum, Section 54 10,036.63  
 To Wilbanks - Section 2 9,963.37  
 20,000.00

\* Note: This check is dated 12-20-62 which is two days prior to the completion of the Wilbanks well - Under the Wilbanks contract, no money is due until January 21, 1963 - Pre-payment, of course, is acceptable.

*Approved Exhibit 5*





BAKER & TAYLOR REFERENCE					CHECKS RECEIVED				APPLICATION			
DATE	G/L MONTH	INVOICE NUMBER	J. E. NUMBER	CUSTOMER NUMBER	MAKER	ISSUED TO	CK. NO.	CHECK DATE	DEPOSIT DATE	DR.	CR.	BAL.
1-10-63	12-62	62292	92-20	030						\$7,200.00		\$7,200.00
12-26-62	12-62	62276	---	030							1,365.00	\$9,835.00
12-20-62	12-62	---	89-14	912	Tri-State	B&T	142	12-15-62	12-20-62		20,000.00	\$9,835.00
12-27-62	12-62	---	89-15	912	Tri-State	B&T	156	12-20-62	12-27-62		9,963.37	\$25,871.63

THE CONTRACT PROVIDES FOR THESE TERMS AND DUE DATES:

CREDITS WERE RECEIVED FOR PAYMENT AS FOLLOWS:

CONDITION	AMOUNT	TO BE PAID BY:	MAKER	CK. NO.	CK. DATE	AMOUNT	REMARKS:
Turnkey Contract (-800.00 - D&T)	57,200.00	On January 21, 1963	B&T CM.		12-26-62	1,365.00	Oil from O. O. C. - Section 56
			Tri-State	00142	12-15-62	20,000.00	Prepayment directed by Tri-State
			Tri-State	00156*	12-20-62	9,963.37	Prepayment
			TOTAL PAID			31,328.37	
			BALANCE			<u>25,871.63</u>	- PAST DUE

\* This Ck. #56 for \$20,000.00 was applied as follows:

TO: Nusbaum - Section 54	10,036.63	- because of past due balance <sup>(1)</sup>
TO: Wilbanks - Section 2	9,963.37	- prepayment on well being drilled
	20,000.00	

(1) See reference on Nusbaum, Section 54, detail analysis sheet

*Expanded Exhibit 4*



Feb. 11, 1963

RE: Sec. 2, Block 1,  
H&GN, Hansford Co.,  
Texas

Mr. H. F. Schlittler  
1904 Truxton Ave.  
Bakersfield, California

Dear Foy:

This letter will confirm our agreement as to the Cleveland Gas Well on the above captioned Section.

You will be assigned a 3/4 interest in this well subject to the customary 1/8 royalty, a 1/32 override to Phillips Pet. Co. and a 1/92 (one thirtysecond) override to the people from whom the deal was obtained. This assignment will be made to you or by the order of you when the well is finally completed and all expenses have been taken care of by each of us as to the percentage which we own.

The agreement with Phillips is enclosed so you will have a thorough knowledge of the transaction and in case you are successful in making a deal with some one on Sec. 2 and also the S/2 of Sec. 56, Blk 4, T&NO, Hansford County, you can present a true picture of the lease.

This deal will have additional good locations such as a lower morrow on Sec. 2 and an excellent Upper morrow on 56. There are also additional locations for the Marmaton in both leases and especially on Sec. 56. The Phillips well in Sec. 2 made over 6,000,000 cu ft of Gas natural and was ruined when treated. This zone is a certainty.

The well is cleaning up and we will try to get a potential in the next 4 or five days. I have already contacted Northern Natural and we should get a connection in the near future.

In line with our telephone conversation, it will be to our mutual advantage to sell this well and our additional interest in 56 so that we can proceed with the development of the BA farmout.

Regards,

J. D. Amend

APPENDIX EXHIBIT 7



BAKER & TAYLOR DRILLING COMPANY  
 REFERENCE INDEX ACCOUNT #107 FOR  
 J. D. AMEND - 030 & TRI-STATE PETROLEUM - 912

R E F E R E N C E

I N D E X

WELL NAME	REFERENCE	ACCT. NO. 107 GENERAL LEDG. ACCT. MONTH	CUSTOMER NUMBER	INVOICE OR DEPOSIT DATE	DEBIT OR CREDIT AMOUNT	AMOUNT OF BALANCE	J. E. PAGE NO.	GENERAL Ledg. (Mo.) PAGE #	COMPOSITE G. LEDGER PAGE #	
#056 O. D. C.	B62098									
		JE 3119		June 1962	030	7-10-62	57,220.95	031	June 1	20
		JE 2609		June 1962	030	6-5-62	(11,000.00)	026	June 1	8
		JE 2609		June 1962	030	6-25-62	( 9,000.00)	026	June 1	8
	JE 3504		July 1962	030	7-10-62	(37,220.95)	-00-	035	July 1	9
#054 Nusbaum		B 62194		Oct. 1962	912	10-25-62	67,940.63		Oct. 2	24
		B 62200		Oct. 1962	912	11-6-62	54.66		Oct. 2	24
				(Sept. 1962	912		146.37 )		Sept. 2	25
				(Sept. 1962	912		13.36 )		Sept. 2	25
				(Oct. 1962	912		279.50 )		Oct. 2	24
				(Disc.	912		( 6.38 )			
		B 62211			912	11-7-62	432.85			
				(Oct. 1962	912		275.00 )		Oct. 2	24
				(Oct. 1962	912		15.00 )		Oct. 2	24
				(Nov. 1962	912		186.30 )		Nov. 3	23
		B 62263			912	12-18-62	476.30.)			
		B 63299		Jan. 1963	912	1-22-63	3,390.96		Jan. 1	17
		CM 63024		May 1963	912	5-7-63	( 2,258.77)		May 3 (63-64)	23
		JE 5507		Sept. 1962	912	9-21-62	(30,000.00)	055	Sept. 2	11
	JE 7503		Nov. 1962	912	11-2-62	( 5,000.00)	075	Nov. 3	14	
	JE 6610		Oct. 1962	912	10-26-62	( 5,000.00)	066	Oct. 2	12	
	JE 8913		Dec. 1962	912	12-13-62	(20,000.00)	089	Dec. 3	16	
	JE 8915		Dec. 1962	912	12-27-62	(10,036.63)	-00-	089	Dec. 3	16
#002 Wilbanks	B62292									
		JE 9220		Dec. 1962	030	1-10-63	57,200.00	092	Dec. 1	14
		CM 62276		Dec. 1962	030	12-26-62	( 1,365.00)		Dec. 1	19
		JE 8914		Dec. 1962	912	12-20-62	(20,000.00)	089	Dec. 3	16
	JE 8915		Dec. 1962	912	12-20-62	( 9,963.37)	25,871.63	089	Dec. 3	16





APPENDIX EXHIBIT 9.

Quotation From In Re Diversey Bldg. Corp.,  
86 F.2d 456.

“The question here presented is whether the District Court had the power to release Becklenberg from his guaranty of the old bond issue in consideration of his guaranty of the new bond issue, pursuant to the reorganization plan which had been approved by the court after its acceptance by two-thirds in amount of the allowed and affected claims of each class of creditors, but which had not been accepted by appellants, who were bondholders of the original issue.

This question must be answered in the negative. Section 265 of the Judicial Code (28 U.S.C.A. § 379) provided that the writ of injunction shall not be granted by any federal court to stay proceedings in any state court, except where authorized by a law relating to proceedings in bankruptcy. Our attention has not been directed to any section of the Bankruptcy Act which would authorize the issuance of this injunction. It is quite true that the bankruptcy court has complete jurisdiction of the person and property of the debtor, and may protect that jurisdiction to the fullest extent by injunctive process, but further than this, it can not go. Appellee urges that authority for the injunction is to be found in section 2 (15) of the Bankruptcy Act (11 U.S.C.A. § 11 (15)), and section 262 of the Judicial Code (28 U.S.C.A. § 377). Those sections, however, merely invest the court with power to protect its jurisdiction and to enforce its orders which do not exceed the limits of its jurisdiction.

The trouble here is that the court exceeded its jurisdiction with respect to the subject matter before it. Appellants were in no way interfering or threatening to interfere with the court's jurisdiction of the debtor or its

estate, or its lawful reorganization. Their actions and threatened actions were merely in derogation of that part of the plan which proposed to release Becklenberg's guaranty of the original bonds. Their position was sound and the court was without jurisdiction to restrain them in this respect. It is quite true that a continuation of appellants' activities might have frustrated the approved plan, but if so, it was because it was too extensive in its scope. It not only purported to reorganize the debtor's estate by reducing the amount of its debt and interest and extending the time of payment, but it also essayed to reduce the indebtedness of Becklenberg and extend his time for payment. His estate is not subject to reorganization under section 77B, and he can not modify his obligations by the reorganization of other insolvents. The only relief which he may seek under the Bankruptcy Act, with respect to his debts, is to be found under section 74 as amended on June 7, 1934 (11 U.S.C.A. § 202), and the provisions of the act as it existed before that amendment; and he is not entitled to relief under those provisions until he tenders his estate to the bankruptcy court for administration, and establishes the fact that he is insolvent, or is unable to meet his debts as they mature. None of these facts appear, hence the court was without jurisdiction to make the order complained of insofar as it affected the original guaranty of Becklenberg. This question was decided adversely to appellee's present contention by the Second Circuit Court of Appeals in *Re Nine North Church Street, Inc.*, 82 F.(2d) 186. We are in accord with the conclusions therein expressed. They are supported by section 16 of the Bankruptcy Act (11 U.S.C.A. § 34) which provides that the liability of a person who is a co-debtor with, or guarantor, or in any manner a surety for, a bankrupt, shall not be altered by the discharge of such bankrupt.

In support of the order, appellee relies upon *Continental Illinois Nat. Bank & Trust Co. v. Chicago Rock Island & P. Railway Co.*, 294 U.S. 648, 55 S.Ct. 595, 79 L.Ed. 1110. It was there held that the court was warranted in restraining creditors, pending the preparation and submission of a plan of reorganization, from selling collateral deposited by the debtor with the creditors as security for the debtor's obligations, in which it was provided that the creditors might sell the securities upon default in payment by the debtor. We think the case is not in point. The record there disclosed that the fair value of the securities respectively held exceeded the several amounts of the debts, hence there was a valuable equity in the securities which belonged to the debtor and constituted a part of its assets. The restraining order merely served to protect the debtor's assets until a plan could be presented. Here, no such question arises, for the injunction involved related to acts which in no manner interfered with the debtor's assets."



APPENDIX EXHIBIT 10.

Testimony of J. D. Amend as to Conversation  
With Roy Bulls.

At the hearing of March 24 and 25, 1964 on the Show Cause Order, J. D. Amend testified as follows:

“Q. During the month of December, did you receive a check from Tri-State Petroleum? A. Yes, I did.

Q. On or about what day, do you know? A. It was about the middle of December.

Q. And was that check made payable to you or to someone else? A. It was made payable to Baker & Taylor Drilling Company.

Q. And what did you do with that check? A. I took it to Baker & Taylor and turned it over to Baker & Taylor.

Q. Who in Baker & Taylor’s office did you turn it over to? A. I turned that check over to Roy Bulls.

Q. And who is Roy Bulls? A. He is connected with the company, I believe probably as a vice-president. But he is one of the officials of the company.

Q. Do you know whether or not this is the check you turned over to him (indicating)? I am referring to check No. 00142 drawn on the Greenfield State Bank by Tri-State Petroleum, Inc., and signed by Mr. Buntin and Mr. Schlittler, and payable to Baker & Taylor in the sum of \$20,000.00. A. Now, there are three of these checks, and the dates on these checks are close together, and I did take one of these checks and turn it over to Baker & Taylor; but as to which one I did, I can’t definitely say. I don’t recognize which one it was.

Q. Was there a stub on the one you turned over?  
A. I’m not sure about it.”

\* \* \* \* \*

“Q. Now, at the time you turned that check over to Mr. Bulls, or Baker & Taylor, did you have any con-



versation about the payment of the drilling costs by Tri-State? A. Yes, I did.

Q. And was anyone else present other than you and Mr. Bulls, at the time? A. No, I believe not.

Q. And where was the conversation held? A. It was in the office of Baker & Taylor Drilling Company.

Q. And what was that conversation? Will you relate it? A. We were both aware of some of these checks that hadn't been paid, from Tri-State.

Q. You mean some had bounced? A. Yes; and I told Roy, that is Roy Bulls, that I didn't want to carry a further interest in this well, I couldn't afford to, and that if Tri-State didn't come up with the money, or Mr. Schlittler or whoever was supposed to furnish the checks, that I wanted to know about it, that I had some other people I thought would buy my interest.

Q. Did you tell him how much they were supposed to pay? A. Yes, I did.

Q. What did you tell him? A. \$60,000.00; and he told me that he would notify me as to whether he got the checks or not.

Q. Did you later have a conversation with him? A. Yes, I did.

Q. And was it personally or by telephone? A. It was by telephone. He called me and told me that he had received the third check in the amount of \$20,000.00 or a total of \$60,000.00." (TR March 24-25, 1964 hearing, p. 15 to p. 18)

Q. BY MR. UTLEY: Mr. Amend, was there any particular reason why you told Mr. Bulls if this \$60,000.00 was not paid you wanted to know about it? A. Yes, there was. As I just stated, I wanted to do something else with this—

MR. BERRY: If it please the court, I didn't understand that to be a question as to what he told Mr. Bulls.

MR. UTLEY: Well, I think he has answered the question.

Q. Now, did you tell Mr. Bulls what the reason was? A. Yes, I told him.

Q. What did you tell him?

THE SPECIAL MASTER: Just state the conversation between yourself and Mr. Bulls.

THE WITNESS: I told him this, that I didn't want to carry that interest myself, and unless it was paid off by these people that I wanted to sell the interest elsewhere.

Q. BY MR. UTLEY: And then is when he told you he would let you know if the checks — A. He agreed to let me know if and when he received the checks." (TR March 24-25, 1964 hearing, pp. 19 and 20)

“Q. BY THE SPECIAL MASTER: Subsequent to December 20th of 1962, did you have any further conversation with Mr. Bulls with reference to the payment or nonpayment of additional money? A. After I received this call that the monies had been paid, I had no further conversation with him about it and had no —

Q. Wait a minute. After what? A. After I received a telephone call from Mr. Bulls telling me that the \$60,000.00 had been paid.

THE SPECIAL MASTER: All right.

THE WITNESS: Now, the date of that is why I say what I do. That might have been after December 20th.

THE SPECIAL MASTER: Let me see the last check.

THE WITNESS: It would be after the last check was received.

MR. UTLEY: The perforation shows the last check was paid on the 4th of January, 1963.

THE WITNESS: My answer then would be there was no further conversation following that check.

THE SPECIAL MASTER: All right.” (TR March 24-25, 1964 hearing, pp. 28 and 29)

“Q. What did you deliver to Baker & Taylor for application on that contract from any source? A. I delivered a check signed by Tri-State Petroleum Company in the amount of \$20,000.00.

Q. Mr. Amend, introduced this morning as Trustee’s Exhibit 5 was a check 00142, which I believe you testified was the \$20,000.00 check which you delivered to Baker & Taylor Drilling Company. A. That seems to be it.

THE SPECIAL MASTER: Is that the check — what date?

THE WITNESS: December 15th.

THE SPECIAL MASTER: Yes, dated December 15th.

Q. BY MR. BERRY: Actually, Mr. Amend, at the time that check was delivered to Baker & Taylor Drilling Company, that is the check 00142, it had a stub on it, did it not? A. Well, this shows a stub on it, and I’m sure it did.

MR. BERRY: Mr. Utley, I believe that you introduced that from the deposition this morning, did you not?

MR. UTLEY: Yes, to show that there was a stub

MR. BERRY: Fine, thank you.

Q. Now, Mr. Amend, that is the only payment that you delivered to Baker & Taylor in any regard for application on the contract price with respect to the drilling of the well on Section 2? A. That is the only check that I delivered to them, yes.

Q. Did you receive a receipt for that check, Mr. Amend? A. I possibly did. I don’t have the receipt, but I might possibly have received one.

Q. The other two \$20,000.00 checks that you were questioned about this morning, if they got to Baker &

Taylor Drilling Company you did not deliver them, did you? A. No.” (TR March 24-25, 1964 hearing, pp. 50-51)

“Q. Now, Mr. Amend, do you know or could you determine the date at which you delivered to Baker & Taylor the check No. 00142? A. Wasn't there an exhibit that had that date on the—

Q. There is a receipt, deposition Exhibit No. 12, which— A. Well, that would be the approximate date of it.

Q. December 19, 1962? A. Yes.

MR. UTLEY: That delivery was what date?

MR. BERRY: December 19, 1962.” (TR March 24-25, 1964 hearing, p. 53)

“Q. Mr. Amend, counsel for Baker & Taylor Drilling Company asked you a moment ago if you told Mr. Bulls when you handed him this \$20,000.00 check to apply that on the Section 2 well, and you stated that you did not. At the time you handed Mr. Bulls that check, did you know of any other indebtedness which Tri-State Petroleum owed Baker & Taylor Drilling Company? A. No.

MR. BERRY: We object to that as immaterial, Your Honor.

THE SPECIAL MASTER: Overruled.

Q. BY MR. UTLEY: Did Mr. Bulls at that time advise you of any other indebtedness owed by Tri-State to Baker & Taylor? A. No.

Q. Did Mr. Bulls at any time advise you that a portion of the three \$20,000.00 checks had been applied on some pre-existing indebtedness? A. No.

Q. When did you first learn that it had been applied on some preexisting indebtedness? A. Well, it was some months later, or some weeks later, probably along in May or some time about that time.

Q. You mean the following year? A. Yes, 1963.” (TR March 24-25, 1964 hearing, pp. 72-73)

At the July 1 and 2, 1964, hearing, J. D. Amend testified as to his conversation with Bulls, as follows:

“Q. Mr. Amend, was there an occasion when you took a \$20,000.00 check made by Tri-State to the office of Baker & Taylor Drilling Company? A. Yes.

Q. To whom did you take that check? A. I believe I gave that check to Roy Bulls.

Q. And at that time was Mr. Bulls in his office or your office? A. He was in his office.

Q. Was there anyone else present at that time? A. No, I think not.

Q. And was that in December of 1962? A. Yes.

Q. Did you have a conversation with Mr. Bulls at that time? A. Yes, I did.

Q. What did you say to Mr. Bulls and what did Mr. Bulls say to you? A. I told Roy that I wanted to know if he received the money to the extent of \$60,000.00, that Tri-State was supposed to pay that, or somebody was, Mr. Schlittler, and that if they didn't I wanted to know about it, that I had some other people that I thought would take the interest; and he told me that he would notify me if he received that amount, and he did.

Q. And what did he say in the subsequent conversation when he informed you of that? A. Well, we had discussed receiving these checks on several occasions, and he always told me when he received that check—

\* \* \* \* \*

“Q. BY MR. LANDENBERGER: Confirming your answer first, Mr. Amend, to the occasion on which you took the \$20,000.00 Tri-State check to the Baker & Taylor offices, was there any further conversation on that occasion, either by you or by Mr. Bulls? A. I don't believe there was, not of any consequence anyway.

Q. Was there any subsequent conversation, in person or by telephone, between you and Mr. Bulls pertaining to any Tri-State checks in relation to the Section 2 contract? A. Yes, there was. There was—

Q. When was the next occasion? A. Oh, it was possibly another week or ten days later.

Q. And did you and Mr. Bulls have any conversation on that occasion? A. Yes, we did.

Q. Was it in person or by telephone? A. As I recall, it was by telephone.

Q. And did you receive that call or make that call? A. I received the call.

Q. Did the person on the other end of the call inform you he was Mr. Bulls? A. Yes, he did.

Q. Are you familiar with Mr. Bulls' telephone voice. A. Yes.

Q. Had you talked with him on the telephone on numerous occasions? A. Yes.

Q. And what did Mr. Bulls say to you and what did you say to Mr. Bulls on that occasion, in that conversation? A. He said he had received the last of the checks, the full amount of the \$60,000.00, or another \$20,000.00 check. I don't recall just how it was put, but anyway it added up to his having received the \$60,000.00.

Q. Was there anything else said by Mr. Bulls on that occasion? A. No.

Q. Anything else said by you to him? A. Not that I recall." (TR July 1-2, 1964, hearing, pp. 92-95)

"Q. Mr. Amend, you are familiar with the deposition Exhibit 12, are you not, the receipt for the \$20,000.00 check 00142? A. Yes, I have seen that.

Q. That is the receipt that you received when you delivered the \$20,000.00 check, is it not? A. I received this receipt some time after that. I don't know whether it was at that particular time or whether I received it in the mail. But I did receive a copy of this. I did receive it.

MR. UTLEY: May I see that receipt, Mr. Berry?

MR. BERRY: Yes.



Q. That actually marks the time, does it not, that you delivered the \$20,000.00 check referred to there? A. Well, now, I don't know, Hy, whether it does or not. It would certainly be the approximate time. It would be close to it." (TR July 1-2, 1964 hearing, pp. 99-100)

"Q. BY MR. BERRY: At the time your deposition was taken, Mr. Amend, it was your best recollection that this receipt represented the time at which you delivered the check. Would that be your best recollection? A. Well, it would be the approximate time. It would be fairly close to it, within a day or two of it.

Q. Well, would you make any better guess about the time on it than that? A. Well I would guess that the thing, if it was mailed to me, was probably prepared right after I was there and mailed out, if I had to guess." (TR July 1-2, 1964 hearing, pp. 101-102)

"Q. Now, the conversations with respect to the \$20,000.00 checks, telephone conversations with respect to the \$20,000.00 checks, how many were there? A. I imagine one or two.

Q. Well, was it one or was it two? A. Well, now, I just don't remember. That has been quite a long time back, and Roy and I talked personally a lot and I wouldn't remember for sure whether it was personally we talked or how many times or whether it was by telephone every time.

Q. All right, you say you had a telephone conversation with Roy Bulls at the time you delivered this check 142.

MR. UTLEY: No, he didn't say that.

THE WITNESS: No, I didn't say I had that. I said I delivered that check. I believe I delivered it to Roy. However, I might not have, but that is my recollection, that I did deliver it to Roy.

Q. BY MR. BERRY: It is just as possible you delivered it to Max? A. It could be that I did.



Q. Now, did you have a conversation with Roy at the time you delivered this check 142? A. Well, of course—

THE SPECIAL MASTER: Is that the check that was earmarked for Section 2?

MR. BERRY: Yes, sir.

THE WITNESS: Of course, I have testified from the beginning that I didn't know definitely the number on that check, or whether it had Section 2 on it, that I thought it did and that that was probably the check, and I did have a telephone conversation with Ray when that check was delivered.

Q. BY MR. BERRY: A telephone conversation or a personal conversation? A. I mean a personal conversation.

Q. The only check that identified Section 2, when it was delivered you had a telephone conversation? A. At about that time, I did, yes.

Q. And that was a personal conversation? A. Well, I believe that it was.

Q. All right. Now, did you have one or more other personal telephone conversations with Roy about — at least one or more others? A. At least one more, yes.

Q. One more, and would it be your present recollection that it was one more? A. No, it wouldn't. I wouldn't attempt to say because we had numerous conversations, telephone conversations, and whether we mentioned a \$20,000.00 check or not I wouldn't attempt to say." (TR July 1-2, 1964 hearing, pp. 103-105)

“Q. Mr. Amend, were there ever any discussions between you and Roy Bulls about how the checks that had been delivered by you in connection with the Nusbaum well were to be applied? A. No.

Q. Were there ever any discussions between you and Mr. Bulls about how the checks which Baker & Taylor received from Tri-State should be applied? A. No.

Q. Were there ever any discussions between you and anybody else connected with Baker & Taylor Drilling Company about how the checks delivered by you to Baker & Taylor in connection with the Nusbaum well should be applied? A. No.

Q. Were there ever any discussions between you and anybody connected with Baker & Taylor Drilling Company about how the checks received by Baker & Taylor from Tri-State should be applied? No.” (TR July 1-2, 1964, hearing, p. 108)

By the deposition of J. D. Amend which was introduced in evidence at the March 24 and 25, 1964, hearing, as Exhibit 1, Amend’s testimony was as follows:

“Q. Now did you handle the credits on the Wilbanks well? A. Did I handle what?

Q. The payments on the Wilbanks well to Baker & Taylor Drilling Company? A. I presume you have reference to those three \$20,000.00 checks?

Q. Whatever was paid. Now we may as well move into the three checks that were referred to here. A. Well, one of those checks was sent directly to me and the other two checks were sent direct, as I remember it.

Q. You don’t have the originals of those \$20,000.00 checks? A. No.

Mr. Utley: I have the originals.

Q. The contract for the drilling of the Wilbanks well on Section 2, as set out here in Defendant’s Exhibit One, made between you and Baker & Taylor Drilling Company; now, you say of the \$20,000.00 checks, you delivered one check after it was sent to you?

Which check was that? If you know? A. I don’t know. I couldn’t tell you. I think that it was possibly the second check but I just don’t know.

Q. I am handing you check Number 142 and a receipt on December, 1962, and ask you to look at those A. This looks like the same.

Mr. Berry: Identify those as Deposition Exhibits 12 and 13, I believe.

Q. The one check that you delivered and was receipted for was the only check of Tri-State that you had anything to do with then, Mr. Amend, with respect to the Wilbanks well? A. Well, that is the only one that I received, if that is the one, and I believe that it is.

Q. Your receipts for Check Number 142— A. Yes, it corresponds with that check, all right.

Q. If there were two other checks of \$20,000.00, received by Baker & Taylor Drilling Company from Tri-State, at any time; you didn't have anything to do with those? A. Do you mean actually receiving and delivering the checks?

Q. Well, we'll say first, did you have anything to do with the delivering or receiving of any other checks, whatsoever, from Tri-State in connection with the Wilbanks well than the one that you were receipted for?

A. No.

Q. Did you have anything to do with them in any fashion? with those checks? A. Well, I don't know whether I know what you mean by—

Q. Anything that you have to do with them, any dealings that you had or any correspondence pertaining to them. A. Any dealings that I had with those, of course, it was my understanding—is this what you want, now—my understanding of what the checks represented?

Q. No. No, I just want to know of any conversations, communications, or correspondence, or directions.

A. I was notified that the checks had been received.

Q. You mean of Baker & Taylor Drilling Company? A. Yes. Roy Bull notified me.

Q. Now did you have any instruction from Tri-State Petroleum with respect to those checks? Did they communicate with you about them? A. Well, they told

me that they had sent the checks but they didn't give me any instructions about the checks. They just told me they had sent the checks to Baker & Taylor.

Q. Now, did you know at the time those two \$20,000.00 checks of Tri-State were received by Baker & Taylor Drilling Company, that there was yet a substantial indebtedness owing in connection with the Nusbaum well? A. I was aware only of the small indebtedness, if one even existed. I had presumed and this is only a presumption, that Baker & Taylor had received \$60,000.00; \$30,000.00 that I had given to them and \$30,000.00 in escrow or in some other way.

But that was only a presumption. I didn't know that they hadn't. I do now." (Exhibit 1 - Deposition J. D. Amend, p. 27-29)

Q. Now, three checks that you knew or heard something about, are those, as you understand it, copies of those three checks? A. As I understand it, they are.

Q. And one of those is Check Number 1027? A. One of them is what?

Q. Check Number 00127? A. That is right.

Q. Check Number 10042. A. That is 00142.

Q. And Check Number 00156? A. That is right.

Mr. Utley: Those are for \$20,000.00 each.

Mr. Berry: Yes.

Q. Now the copies that you have, don't show a stub on Check Number 1042, which refers to Section 2, does it? A. No, it doesn't.

Q. Mr. Amend, with respect to the Wilbanks well, according to your computation, what would yet be owing Baker & Taylor Drilling Company, on account of the drilling of that well? A. On which well?

Q. The Wilbanks well, on Section 2? A. I wouldn't know. It would just depend on how those three \$20,000.00 checks were credited. If they were credited as I presume they would be, there wouldn't be anything

due. In fact, I might have a credit with Baker & Taylor.

But as to how they were credited and so forth, I don't know.

Q. You don't know how they were credited and you don't know how they were supposed to be credited?

A. That is right. I can just only tell you what I understood.

Q. And you gave no direction with respect to the crediting of them? A. No." (Exhibit 1 - Deposition of J. D. Amend, pp. 30-32)

"Q. \* \* \* When did you first have an understanding with Mr. Schlittler pertaining to any interest he or his companies with which he was connected would have an interest in the well on Section 52, Wilbanks? A. Section 2?

Q. Section 2, yes, sir. A. Well, that would be more or less of a carry over because for this reason, they had gone along on these other wells and had drilled the previous wells, but when I secured that farm-out on Section 2, I told Schlittler we would have to have the money to drill this thing with.

That some of those bills were slow and hadn't been paid and so forth and people were getting hot checks.

And that started about the time that I got the agreement with Phillips on this Section 2.

It was understood that if Schlittler and Johnson and the Fish Estate came up with the \$60,000 which they had been paying for three-fourths interest, that they could participate in Section 2.

Q. And it was subsequent to that that you wrote this letter so stating that they could have an interest in it upon the payment of the expenses? A. Well, when this letter was written, I had presumed that the drilling cost had been paid.

Q. From what circumstances had you presumed the drilling cost had been paid?

What were the circumstances that caused you to believe that? A. Well, it was probably more of a lack of knowing about it than knowing about it. I had delivered this one check and then I had asked Roy Bulls to let me know if this money came in because I wanted to sell this interest to someone else.

Q. You were talking about Section 2? A. Section 2.

Q. You say Roy who? A. Roy Bulls.

Q. Who is he? A. He is connected with Baker and Taylor Drilling Company.

Q. Do you know in what capacity? A. I believe he is probably a vice president.

Q. And you told him to let you know? A. Yes.

Q. What? A. Let me know if he received that \$60,000 for that well.

Q. Did you later talk to him about it? A. Yes, he called me and told me that he had received the \$60,000 when he got the last check.

Q. That was in December of '62? A. Right. Let me correct something there.

Q. And—all right. A. I said for that well, the well itself, was actually, never discussed. It was just presumption on my part that the \$60,000 was for this well.

And Roy told me that he had received \$60,000.

Q. Did you know about any other indebtedness that might be due from Tri-State to Baker & Taylor? A. No, I didn't.

Q. And it was the expense on Section 2, that is, the \$60,000 on Section 2 that you asked him to inform you about when he received the money? A. That is right.

Q. And subsequent to that he called you and said he received the \$60,000? A. Yes.

Q. But when you first asked him to keep you informed or to inform you when he got the money, you specifically talked about Section 2? A. That is right.



Q. Had Baker and Taylor ever told you or anyone connected with them ever told you that there was a balance due on Section '64? A. Section 54?

Q. Section 54. A. Well, Max Banks told me about that not too long after that that there was a—

Q. I know but that was after your conversation with the other gentleman about receiving the \$60,000, wasn't it? A. That is right. If they did tell me, it sure didn't register with me, because I wasn't aware of it.

Q. And you have some photostats of those three \$20,000 checks you refer to? A. Yes, sir.

Q. Now, the checks that you refer to as Baker & Taylor having received, the first in point of date is December 15, 1962, in the sum of \$20,000, payable to Baker & Taylor, drawn on the Greenfield State Bank, Bakersfield, California, and signed by Schlittler and Mr. Buntin? A. Yes, these are the checks.

Q. And the other two are both dated—let me see the dates there.

The next in point of date is December 17, 1962, in the sum of \$20,000 payable to Baker & Taylor Drilling Company Box, Post Office Box 2748, Amarillo, Texas, signed by Mr. Schlittler and Mr. Buntin drawn on the Greenfield State Bank, Bakersfield.

And the third one was in the same sum on the same bank signed by the same persons, payable to Baker & Taylor, dated December 20, 1962, in the sum of \$20,000? A. That is right.

Q. And those are the three checks that you were informed had been received? A. Right.

Q. And you were informed by Baker & Taylor that they had been received? A. Yes.

Q. Now, those checks were received in the month of December, were they not? A. Well, from the dates, I presume that they were." (Exhibit 1—Deposition of J. D. Amend, pp. 63-68)

“Q. Well, anyway, the checks that was coming through for payment at that time were all Tri-State Petroleum, were they not? A. Yes.

Q. Which indicated it was a Tri-State Petroleum interest? A. Well, the checks were all Tri-State checks, and where their money came from, I wouldn't know, but they all were Tri-State checks.

Q. Now, this agreement between you and Mr. Banks of Baker & Taylor, was between you and Baker & Taylor Drilling Company.

Now, when these checks of Tri-State Petroleum began coming through and were delivered to Mr. Banks' company, was there anything said about Schlittler's interest in that to Mr. Banks or to anyone in connection? A. Yes, I talked to Mr. Bull to this extent about it. I told him that I wanted to know if that was paid because if it wasn't paid, I wanted to sell that interest to somebody else.

Q. And he told you he would let you know? A. Yes, he did.

Q. Was it subsequent to that that he did call you and say that he had received the \$60,000? A. That is right, received \$60,000.

Q. All right.” (Exhibit 1—Deposition of J. D. Amend, p. 76)

“Q. Now, J. D., you didn't, on June 13, when you wrote the letter to Schlittler, Exhibit 25, know anything about what the credits were supposed to be on the Nusbaum or the Wilbanks wells, did you? A. I didn't know about what they were supposed to be?

Q. Right. A. No.

Q. And you don't now know what they were supposed to be, do you? A. No, I don't.” (Exhibit 1—Deposition of J. D. Amend, pp. 85-86)

“Q. And you never at any time and don't now take the position that anything was paid in connection with

the two wells over and above and in excess of \$100,000, do you? A. That is all I would know about.

Q. And you don't know now how that \$100,000 should have been applied as between the Nusbaum and the Wilbanks wells, do you? A. No.

Q. And you don't take any position about that yourself at this time? A. No, I don't.

Q. Now, when was the conversation with Roy Bulls that you mentioned a while ago about Baker & Taylor having received \$20,000, three \$20,000 checks? A. Well, I don't know whether I made myself clear or not.

I told Roy that I wanted to, if this money didn't come up, that I wanted to sell that interest elsewhere, and I wanted him to let me know.

Mr. Utley: You say that interest; what interest? A. The three-quarters working interest in the Number 2 well.

I wanted him to let me know if and when he received \$60,000.

And Roy let me know, and I was of the opinion that it was immediately after the last checks came.

Q. Did he tell you that the \$60,000 was to be credited to the Wilbanks well? A. No, there wasn't any mention of credit at all.

Q. Tri-State had been responsible to Baker & Taylor for the drilling of the Nusbaum well so far as the drilling is concerned? A. Yes.

Q. And you were responsible to Baker & Taylor Drilling Company for the contract price for the drilling of the Wilbanks well? A. That is right.

Q. And did anybody ever tell you that anything more than the \$100,000 had been received by Baker & Taylor Drilling Company in connection with the 2? A. No." (Exhibit 1, Deposition of J. D. Amend, pp. 87-88)

"Q. So what would your recollection be that your conversation with Roy Bulls was with respect to re-

ceipt of the \$20,000—of three \$20,000 checks, was before the completion of the Wilbanks well or would it have been after the completion of the Wilbanks well?

A. It was before the completion of that.

Q. It was before the completion of the Wilbanks well? A. Right.

Q. And that conversation was at the time then that the amounts payable were under your contract with Baker & Taylor were not yet payable, wasn't it? A. That is right." (Exhibit 1, Deposition of J. D. Amend, p. 89)

APPENDIX EXHIBIT 11.

Testimony of Roy Bulls as to Conversation  
With J. D. Amend.

At the July 1 and 2, 1964, hearing, Roy Bulls testified as follows:

“Q. Now, Mr. Bulls, were there any conversations between you and Mr. Amend about any \$20,000.00 checks or any checks to be received or received from Tri-State Petroleum, Inc? A. Yes.

Q. What was those conversations? A. The monies—

\* \* \* \* \*

Q. BY MR. BERRY: Mr. Bulls, can you fix by day or date the time of those conversations? A. No, I don't remember any specific date.

THE SPECIAL MASTER: Approximately.

Q. BY MR. BERRY: Were the conversations before the time of the completion of the Wilbanks well? A. Yes.

Q. And do you know where those conversations were? A. In J. D.'s office I would say.

Q. What were the conversations between you and J. D. Amend about checks received or to be received from Tri-State Petroleum?

MR. LANDENBERGER: May we have who was present, counsel, please, on that occasion?

Q. BY MR. BERRY: I will ask you who was present at those conversations. Was there anybody present at those conversations? A. As I remember, there wasn't.

MR. UTLEY: There were you and Mr. Amend. Is that all?

THE WITNESS: Mr. Amend and myself.

Q. BY MR. BERRY: What were the conversations? A. Oh, generally, we didn't know where the checks were—how the mode of payment would be, from

experience, and it was agreed between J. D. and I that he should—that should he get any monies in payment of the drilling he would let me know, and if any should come to us I would let him know.

Q. Did that refer to the Nusbaum well, those conversations? A. Yes.

MR. UTLEY: Wait a minute. You said it referred to the Nusbaum well or the Wilbanks well?

THE WITNESS: All three wells. This was over a period of time.

\* \* \* \* \*

Q. What were the conversations? Were the conversations any more extensive than you have stated? A. No, never very extensive. There were several of them, usually very short in nature, usually in connection with or at the same time of one of the progress reports.

Q. Did you go at any time to Mr. Amend's office to talk to him about getting money specifically on the Nusbaum well? A. Yes. I made one trip down to his office for that reason.

Q. Was that before the commencement of the Wilbanks well? A. Yes, sir.

Q. Was there ever any—why did you go to Mr. Amend for money owing by Tri-State with respect to the Nusbaum well? A. Mr. Amend was the only man we ever had any dealings with.

Q. With respect to either of the three wells? A. Yes.

Q. Did you ever have any direct dealings with Tri-State? A. Well, I met Mr. Schlittler on one occasion.

Q. Well, now, do you know when that was? A. No, I don't.

Q. Did you have any business transactions with Mr. Schlittler? A. No, sir.

\* \* \* \* \*



THE SPECIAL MASTER: Read the question again now, Mr. Reporter.

(Record read as follows:

'The conversations which you had with Mr. Amend with respect to money received or to be received from Tri-State, was there ever any discussion of any nature with respect to the application of any monies that you received?')

THE SPECIAL MASTER: Now, that is answerable by a simple yes or no.

THE WITNESS: No.

Q. BY MR. BERRY: Was there or not any reference to the Wilbanks well in conversations or conversation between you and Mr. Amend with respect to money to be received or received from Tri-State Petroleum? A. None that I recall.

Q. Did you report to Mr. Amend at any time that any check had been received by Baker & Taylor from Tri-State? A. Yes, I think so.

Q. At the time you reported such receipt, did you have conversations with Mr. Amend other than to report the receipt?

MR. UTLEY: Just a moment. I object to the form of the question. Let him state what was said.

Q. BY MR. BERRY: All right, what was said between you and Mr. Amend at the time you reported receipt of a check or checks from Tri-State?

MR. LANDENBERGER: Could we have where it took place?

THE SPECIAL MASTER: Time and place and parties present, the usual foundation.

MR. BERRY: All right.

Q. Was it by telephone or in person? A. By telephone.

Q. Was it more than one time, or do you know? A. I think on two occasions checks were received in our of-

fice and I called J. D. and told him the checks had been received.

Q. What time was it, if you know? A. I don't remember. I couldn't put a date on it.

Q. Would it have been before or after the completion of the Wilbanks well, or do you know? A. I would say before the completion.

THE SPECIAL MASTER: Was anyone else present? A. The conversations were had by telephone, if I remember correctly. I imagine that Mr. Banks or someone else was in the office at the time the calls were made.

THE SPECIAL MASTER: State the conversation as nearly as possible in 'I said' and 'He said' form.

MR. BERRY: Do the best you can.

THE WITNESS: I called J. D. on the phone and told him that we had received a \$20,000.00 check.

Q. BY MR. BERRY: What did he say? A. He acknowledged it, as well as I remember.

Q. Was anything more said by your or by him? A. Not that I remember.

MR. BERRY: Pass the witness.

### Cross Examination

BY MR. LANDENBERGER:

Q. Referring now, Mr. Bulls, to the conversation you have just related on the telephone, didn't you tell Mr. Amend whose check it was? A. I probably stated it was from Tri-State.

Q. And you said nothing more than that you had received it? A. That is right, as our agreement.

Q. Pardon me? A. As per our agreement, mine and J. D's agreement.

Q. Your agreement about what? A. In a previous conversation J. D. and I had agreed that if either of us received money on the payment of the wells we would notify each other.

Q. So you were merely notifying him that you had received a \$20,000.00 check from Tri-State? A. That is right.

Q. Was there any conversation as to where that payment would be applied? A. No.

Q. Where was it applied?

MR. BERRY: If you know, say so and if you don't know say so.

THE WITNESS: I don't know.

Q. BY MR. LANDENBERGER: Do you know whether or not the check you are now referring to was a check that had some designation of Section 2 on it? A. No, I don't think so.

Q. Did you ever have a conversation with Mr. Amend about a check from Tri-State that did have such a designation on it? A. No, I don't remember that I did.

Q. Was there any other occasion when you had a conversation with Mr. Amend about a check from Tri-State? A. I remember I think calling him on a second check that we received in the mail.

Q. What did you tell him on that occasion? A. That we had received a check for \$20,000.00.

Q. Did you tell him it was from Tri-State? A. I can't swear that I did, no.

Q. And did you personally receive either or both of the checks you have just referred to from the mail, Mr. Bulls? A. No, sir. I don't open the mail.

Q. Were they handed to you by someone else in the organization? A. No, sir, Mr. Bowie merely told me that the checks were in.

Q. In other words, you didn't have the checks before you when you were speaking with Mr. Amend? A. Probably not.

Q. Did you give any directions to Mr. Bowie as to how the checks should be applied? A. No, sir.

Q. Do you know of any other officer or director of Baker & Taylor Drilling Company that gave him any

directions as to how the payment should be applied? A. Probably so, in some discussions between the officers at one time or another. I don't know definitely, no.

Q. Were you present in court yesterday when Mr. Bowie testified? A. Yes, sir.

Were you present when he testified that he considered Mr. Amend and Tri-State to be interchangeable accounts? A. What was your question?

THE SPECIAL MASTER: Read the question.

MR. BERRY: I don't believe that was the testimony.

THE SPECIAL MASTER: Well, it comes pretty close to it. The objection, if this be an objection, is overruled.

Read the question, Mr. Reporter.

(Record read.)

THE WITNESS: Yes.

Q. BY MR. LANDENBERGER: Did you consider them to be interchangeable accounts? A. Well, I always looked to Mr. Amend for the whole business. He was the only man I ever had any dealings with.

Q. Well, would you have considered a check from Tri-State to be a payment on Mr. Amend's account?

MR. BERRY: If it please the court, that calls for a conclusion of the witness—

THE SPECIAL MASTER: This is cross examination. The witness may answer. Read the question.

(Record read.)

THE WITNESS: I think yes.

Q. BY MR. LANDENBERGER: If you had received a check from Mr. Amend at a time when an account was owing from Tri-State, would you have applied it on Tri-State's account? A. Yes.

Q. Mr. Bulls, did you ever have a conversation with Mr. Amend in which you told him that the entire \$60,000.00 had been received from the drilling on Section 2? A. No, sir.

Q. Did you ever have a conversation with him in which you told him that any amount of money had been received and paid on the drilling of Section 2? A. No, sir. I never did specify any particular well on any of the payments.

Q. Then as far as any conversation that ever took place between you and Mr. Amend, you never informed him that any money had been paid on the Section 2 drilling contract, did you? A. I don't think so.

Q. Were you present when Mr. Bowie testified concerning an office practice of not sending invoices to customers except the original invoice for the contract price—an office practice of your company, that is? A. Yes.

Q. Was that or is that the practice of the company? A. Yes.

Q. Did you ever have a conversation with Mr. Amend in which you informed him that there was a balance due on the Section 2 drilling job? A. No.

Q. Was there ever an occasion when Mr. Amend personally handed you a Tri-State check in the amount of \$20,000.00? A. No.

Q. Or in any other amount? A. I think that J. D. handed me two checks, I thought they were \$5,000.00 each, at one time." (TR July 1 and 2, 1964, hearing, pp. 72-83)

"Q. Didn't Mr. Amend tell you when he was talking to you about the Section 2 well that he wanted to know whether or not Tri-State sent this money? A. I didn't think that he was specifically talking about Section 2.

Q. Well, he had such a conversation with you, didn't he? A. We talked about receiving money from Tri-State, in one or two conversations.

Q. Do you recall his having told you that he was liable for the payment of the drilling of No. 2 and if

Tri-State didn't send the money he wanted to know it? Didn't he make that statement to you? A. I don't remember that statement.

Q. You wouldn't say he didn't make it, would you? A. I don't remember him making that statement.

Q. Now, you did call him up when two separate checks came in for \$20,000.00 each, didn't you? A. Yes.

Q. And you knew that one \$20,000.00 check had been delivered to the office didn't you, by Mr. Amend? A. Yes.

Q. And didn't you tell him when you got the last \$20,000.00 check through the mail that you had received the \$60,000.00, three checks for \$20,000.00 each? A. I never mentioned the total figure.

Q. But you knew there were three \$20,000.00 checks that came in about that time, didn't you? A. I remember three \$20,000.00 checks being involved, yes.

Q. And you mentioned that to Mr. Amend, didn't you? A. I don't remember mentioning that to him. I merely remember making the two separate calls telling him that a \$20,000.00 check had been received each time.

Q. And didn't you tell him that you had received the full \$60,000.00? A. No, sir.

Q. Well, you had received the \$60,000.00 at that time, hadn't you? A. I guess we had.

Q. And your understanding with Mr. Amend was that if he got in checks he would let you know and if you got in checks you would let him know, is that right? A. Yes, that was my understanding.

MR. UTLEY: That is all." [TR July 1 and 2, 1964, hearing, pp. 88-89)



APPENDIX EXHIBIT 12.

December 19, 1962

RECEIVED of J. D. Amend this 19th day of December, 1962, Tri-State Petroleum, Inc. check No. 00142 in the amount of Twenty Thousand Dollars (\$20,000) to be applied on account.

Max E. Banks,  
Max E. Banks, President



## Index to Exhibits Which Are Part of Record.

### BAKER & TAYLOR DRILLING CO. EXHIBITS:

<u>Number</u>	<u>Description</u>	<u>Page</u>
		(Pages at which offered and received Tran- script March 24-25, 1964 hearing)
A —	Deposit slip dated 6-27-62	37
B —	Midwest Petroleum check for \$11,000.00	38
C —	Copy of \$11,000.00 check and \$9,000.00 check	37
D —	Deposition Exhibit 30 by reference	41
E —	Deposit slip	113
F —	Check 142, \$20,000.00 and deposit slip	118
G —	Nusbaum well computation by Bowie	120
H —	Wilbanks well computation by Bowie	120
I —	Report of Stafford	205
		(Pages at which offered and received Tran- script, July 1-2, 1964 hearing)
J —	Records of Section 56 well	7
K —	Records of Section 54 well	7
L —	Records of Section 2 well	7
M —	Recapitulation sheet	7
N —	Summary of punch cards	19
O —	Certain pages of journal entries	21
P —	Punch card 8914	24
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T —	Invoice 62194	39

TRUSTEE'S EXHIBITS:

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1	— Deposition of J. D. Amend	3
2	— Check 3154, \$30,000.00	12
3	— Check 3418, \$5,000.00	12
4	— Check 3438, \$5,000.00	12
5	— Check 142, \$20,000.00	18
6	— Exhibit 13 in Amend deposition	18
7	— Check 127, \$20,000.00	19
8	— Check 156, \$20,000.00	19
9	— Exhibit 29-B in Amend deposition	76
10	— Photostats of four returned checks	161
11	— Bankruptcy schedules, by reference	203

ANDERSON'S EXHIBITS:

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		(Pages at which offered and received Transcript March 24-25, 1964 hearing)
1	— Telegram from Phillips Petroleum Company	202